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WHO: The Office of the Federal Register.

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WASHINGTON, DC

WHEN: January 30, at 9:00 a.m.

WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: 202–523–5240.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 700]

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from December 29, 1989, through January 4, 1990. Consistent with program objectives, such action is needed to balance the supplies of fresh navel oranges with the demand for such oranges during the period specified. This action was recommended by the Navel Orange Administrative Committee (Committee), which is responsible for local administration of the navel orange marketing order.

DATES: Regulation 700 (7 CFR part 907) is effective for the period from December 29, 1989, through January 4, 1990.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 382–1754.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 (7 CFR part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 123 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order and approximately 4,065 navel orange producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

The California-Arizona navel orange industry is characterized by a large number of growers located over a wide area. The production area is divided into four districts which span Arizona and part of California. The largest proportion of navel orange production is located in District 1, Central California, which represented 85 percent of the total production in 1988–89. District 2 is located in the southern coastal area of California and represented 13 percent of 1988–89 production; District 3 is the desert area of California and Arizona, and it represented approximately 1 percent; and District 4, which represented approximately 1 percent, is northern California. The Committee's estimate of 1989–90 production is 79,800 cars (one car equals 1,000 cartons at 37.5 pounds net weight each), as compared with 70,633 cars during the 1988–89 season.

The three basic outlets for California-Arizona navel oranges are the domestic fresh, export, and processing markets. The domestic (regulated) fresh market is a preferred market for California-Arizona navel oranges. The Committee estimates that about 62 percent of the 1989–90 crop of 79,800 cars will be utilized in fresh domestic channels (49,500 cars), with the remainder being exported fresh (9 percent) or processed (29 percent). This compares with the 1988–89 total of 45,581 cars shipped to fresh domestic markets, about 64 percent of the crop.

Volume regulations issued under the authority of the Act and Marketing Order No. 907 are intended to provide benefits to growers. Growers benefit from increased returns and improved market conditions. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of oranges in the market throughout the marketing season.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the navel orange marketing order are required by the Committee from handlers of navel oranges. However, handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

Major reasons for the use of volume regulations under this marketing order are to foster market stability and enhance grower revenue. Prices for navel oranges tend to be relatively inelastic at the grower level. Thus, even a small variation in shipments can have a great impact on prices and grower revenue. Under these circumstances, strong arguments can be advanced as to

the benefits of regulation to growers, particularly smaller growers.

At the beginning of each marketing year, the Committee submits a marketing policy to the U.S. Department of Agriculture (Department) which discusses, among other things, the potential use of volume and size regulations for the ensuing season. The Committee, in its 1989–90 season marketing policy, considered the use of volume regulation for the season. This marketing policy is available from the Committee or Ms. Schlatter. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate. A "Notice of Marketing Policy" (notice), which summarized the Committee's marketing policy, was prepared by the Department and published in the October 19, 1989, issue of the **Federal Register** (54 FR 42966). The purpose of the notice was to allow public comment on the Committee's marketing policy and the impact of any regulations on small business activities.

The notice provided a 30-day period for the receipt of comments from interested persons. That comment period ended on November 20, 1989. Three comments were received. The Department is continuing its analysis of the comments received, and the analysis will be made available to interested persons. That analysis is assisting the Department in evaluating recommendations for the issuance of weekly volume regulations.

The Committee met publicly on December 27, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, with nine members voting in favor and one abstaining, that 1,350,000 cartons is the quantity of navel oranges deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations was compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, preceding week's shipments and shipments to date, crop conditions, weather and transportation conditions, and a reevaluation of the prior week's recommendation in view of the above.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1989–90 marketing policy. This recommended amount is 100,000 cartons more than estimated in the tentative shipping schedule adopted by the Committee on November 14, 1989. Of the 1,350,000 cartons, 1,282,000 are allotted for District 1, and 68,000 are allotted for District 3. Districts 2 and 4 are not regulated as it was felt that they would be unable to ship up to their allotment levels under regulation. Further consideration will be given to regulation of these two districts at next week's meeting.

During the week ending on December 21, 1989, shipments of navel oranges to fresh domestic markets, including Canada, totaled 1,911,000 cartons compared with 1,531,000 cartons shipped during the week ending on December 22, 1988. Export shipments totaled 364,000 cartons compared with 270,000 cartons shipped during the week ending on December 22, 1988. Processing and other uses accounted for 472,000 cartons compared with 363,000 cartons shipped during the week ending on December 22, 1988.

Fresh domestic shipments to date this season total 12,913,000 cartons compared with 9,581,000 cartons shipped by this time last season. Export shipments total 1,756,000 cartons compared with 925,000 cartons shipped by this time last season. Processing and other use shipments total 3,166,000 cartons compared with 2,319,000 cartons shipped by this time last season.

For the week ending on December 21, 1989, regulated shipments of navel oranges to the fresh domestic market were 1,804,000 cartons on an adjusted allotment of 1,827,000 cartons which resulted in net undershipments of 22,000 cartons. Regulated shipments for the current week (December 22 through December 28) are estimated at 805,000 cartons on an adjusted allotment of 627,000 cartons. Thus, overshipments of 178,000 cartons could be carried over into the week ending on January 4, 1990.

The average f.o.b. shipping point price for the week ending on December 21, 1989, was $7.56 per carton based on a reported sales volume of 1,564,000 cartons compared with last week's average of $7.69 per carton on a reported sales volume of 1,985,000 cartons. The season average f.o.b. shipping point price to date is $8.02 per carton. The average f.o.b. shipping point price for the week ending on December 22, 1988, was $8.55 per carton; the season average f.o.b. shipping point price at this time last season was $9.00 per carton.

The Committee reports that overall demand for navel oranges is moderate. The Committee discussed the recent Florida and Texas freezes and will continue to monitor the effects of these freezes on the California-Arizona navel orange industry. However, it was the consensus of the Committee that, based on information currently available, it was too early to accurately assess damage to those crops.

The 1988–89 season average fresh equivalent on-tree price for California-Arizona navel oranges was $3.86 per carton, 65 percent of the season average parity equivalent price of $5.98 per carton.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the point estimate of the 1989–90 season average fresh on-tree price would be $4.33 per carton. This is equivalent to 66 percent of the projected season average fresh on-tree parity equivalent price of $6.54 per carton. It is currently estimated that there is less than a one percent probability that the 1989–90 season average fresh on-tree price will exceed the projected season average fresh on-tree parity equivalent price.

Limiting the quantity of navel oranges that may be shipped during the period from December 29, 1989, through January 4, 1990, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until December 27, 1989, and this action needs to be effective for the regulatory week which begins on December 29, 1989. Further, interested persons were

given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navel, Oranges.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

1. The authority citation for 7 CFR part 907 continues to read as follows:

Authority: Secs. 1.19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.1000 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 907.1000 Navel Orange Regulation 700.

The quantity of navel oranges grown in California and Arizona which may be handled during the period from December 29, 1989, through January 4, 1990, is established as follows:

(a) District 1: 1,282,000 cartons;
(b) District 2: unlimited cartons;
(c) District 3: 68,000 cartons;
(d) District 4: unlimited cartons.

Dated: December 28, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89–30391 Filed 12–29–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 910

[Lemon Regulation 698]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 698 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 291,766 cartons during the period from December 31, 1989, through January 6, 1990. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 698 (7 CFR Part 910) is effective for the period from December 31, 1989, through January 6, 1990.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475–3861.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committees (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1989–90. The Committee met publicly on December 27, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that overall demand for lemons is moderate.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Arizona, California, Lemons, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.998 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.998 Lemon Regulation 698.

The quantity of lemons grown in California and Arizona which may be handled during the period from December 31, 1989, through January 6, 1990, is established at 291,766 cartons.

Dated: December 28, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89–30390 Filed 12–29–89; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 10

RIN 3150-AD42

Suspension of Access Authorization and/or Employment Clearance; Delegation of Authority to Deputy Executive Directors

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to permit a Deputy Executive Director to suspend an individual's access authorization and/or employment clearance. This amendment will provide greater flexibility in responding to questions concerning the continued eligibility of an individual's access authorization and/or employment clearance.

EFFECTIVE DATE: January 2, 1990.

FOR FURTHER INFORMATION CONTACT: Royal J. Voegele, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492-1562.

SUPPLEMENTARY INFORMATION: On January 9, 1989, the Nuclear Regulatory Commission (NRC) announced organizational changes within the Office of the Executive Director for Operations. In the reorganization, the Commission appointed a second Deputy Executive Director and assigned specific areas of responsibility to the two deputies. Both Deputy Executive Directors report to the Executive Director for Operations. The NRC is amending portions of its regulations to specify that in lieu of the Executive Director for Operations, a Deputy Executive Director is authorized to suspend an individual's access authorization and/or employment clearance.

Because these are amendments dealing with agency practice and procedures, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). The amendments are effective upon publication in the **Federal Register**. Good cause exists to dispense with the usual 30-day delay in the effective date, because these amendments are of a minor and administrative nature, dealing with agency organization.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects in 10 CFR Part 10

Administrative practice and procedure, Classified information, Government employees, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR part 10.

PART 10—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO RESTRICTED DATA OR NATIONAL SECURITY INFORMATION OR AN EMPLOYMENT CLEARANCE

1. The authority citation for part 10 continues to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10450, 3 CFR 1949-1953 COMP., p. 936, as amended; E.O. 10865, 3 CFR 1959-1963 COMP., p. 398, as amended; 3 CFR Table 4.

2. Section 10.21 is revised to read as follows:

§ 10.21 Suspension of access authorization and/or employment clearance.

In those cases where information is received which raises a question concerning the continued eligibility of an individual for access authorization and/or employment clearance, the Director, Division of Security, through the Director, Office of Administration, shall forward to the Executive Director for Operations or a Deputy Executive Director, his or her recommendation as to whether the individual's access authorization and/or employment clearance should be suspended pending the final determination resulting from the operation of the procedures provided in this part. In making this recommendation the Director, Division of Security, shall consider such factors as the seriousness of the derogatory information developed, the degree of access of the individual to classified information, and the individual's opportunity by reason of his or her position to commit acts adversely affecting the national security. An individual's access authorization and/or employment clearance may not be suspended except by the direction of the Executive Director for Operations or a Deputy Executive Director.

Dated at Rockville, Maryland, this 19th day of December 1989.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 89-30343 Filed 12-29-89; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 16

[Docket No. RM87-33-001; Order No. 513-A]

Hydroelectric Relicensing Regulations Under the Federal Power Act; Order on Rehearing

Issued December 26, 1989.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; Order on rehearing.

SUMMARY The Federal Energy Regulatory Commission (Commission) issued a final rule in Order No. 513 (54 FR 23756 (June 2, 1989) III FERC Stats. & Regs ¶ 30,854) on May 17, 1989, revising its regulations governing the relicensing of hydroelectric power projects.

This order grants in part and denies in part rehearing of Order No. 513. This order also amends the regulatory text dealing with the pre-filing consultation process by adding the phrase "Indian tribes" to numerous consultation provisions. Also included in this order is a clarification of § 16.2(c)(2) that applies to requested studies made in the second stage of consultation, and the addition of a new paragraph (d) in § 16.18, which modifies interim environmental conditions in annual licenses.

EFFECTIVE DATE: This order on rehearing is effective December 26, 1989.

FOR FURTHER INFORMATION CONTACT: Ethel Lenardson Morgan, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or

copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357–8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order on rehearing will be available on CIPS for 30 days from the date of issuance. The complete text on the diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

The Federal Energy Regulatory Commission (Commission) is granting in part and denying in part rehearing of Order No. 513.

The Commission issued a final rule in ths docket on May 17, 1989.[1] The final rule revised the regulations governing the relicensing of hydroelectric power projects. These revisions implemented, in part, provisions added to the Federal Power Act (FPA) [2] by the Electric Consumers Protection Act of 1986 (ECPA).[3]

The Commission received twelve rehearing requests.[4] These included a number of requests to stay all or portions of the final rule or to waive particular provisions of the rule for individual projects.[5]

Many of the arguments made on rehearing are the same or similar to those raised in comments on the Notice of Proposed Rulemaking (NOPR).[6] The Commission believes that, with minor exceptions discussed in detail below, the final rule established standards that are well balanced and will facilitate the relicensing process for all involved. To the extent that the arguments presented on rehearing were addressed by the Commission in the final rule and do not raise any new issues of fact, law, or policy, they will not be addressed herein; the Commission incorporates by reference its discussion of these issues in the preamble to the final rule. Several arguments merit additional discussion, and the Commission will explain certain provisions of the regulations and modify others.

A. Acceleration of License Expiration Dates

The final rule provided for the acceleration of license expiration dates for any legitimate interest including, but not limited to, installation of new capacity.[7] Trout Unlimited requests reconsideration on this point, suggesting that acceleration should be discouraged at this time because of the extremely heavy volume of upcoming relicensing proceedings. The Commission declines to make any further revisions in § 16.4 because the final rule provides adequate flexibility in setting license expiration dates.

In response to this same comment made by Trout Unlimited on the NOPR, the Commission stated that it would "be able to weigh the potential burdens on Commission resources when it was considering whether to grant the acceleration request." [8] Trout Unlimited now explains that its main concern was "the burden on resources of other entities involved in the relicensing process, including state agencies, Federal agencies, and public interest groups." It suggests that since the Commission stated that requests for acceleration will be granted "only if it is in the public interest to do so," the Commission must weigh the potential burdens on all parties when considering an acceleration request.

The Commission has stated that it does not anticipate that many licensees will attempt to avail themselves of the acceleration procedure. Also, §§ 16.4(a)(2) and 16.4(c) were revised to give the Commission flexibility in setting time limits in the acceleration process.[9] This flexibility can be used to alleviate time constraints on all of the parties.

B. New Capacity Amendments

Long Lake is concerned that the Commission has decided in § 16.4 that if an existing licensee is interested in developing unutilized capacity at or in the vicinity of its existing project and the license for that project is nearing expiration, the incremental development will be considered only in a relicensing proceeding. It contends that this position is inconsistent with the court's decision in *Kamargo Corp.* v. *FERC.*[10]

Kamargo holds that ECPA does not preclude the Commission from granting a preliminary permit for development of excess hydroelectric capacity at or near an existing project at a time when the project's license is about to expire. In that case, applicants sought a number of preliminary permits to study the feasibility of developing currently unlicensed generating capacity at or near projects owned and licensed by another entity. The Commission refused to grant the permits, *intra alia*, on the ground that ECPA precluded such a grant at a time close to relicensing of the existing projects. The court reversed and remanded the case to the Commission, where it is currently pending.

Lone Lake's concern arises from the following:

(1) The Commission's statement explaining the provision of § 16.4 relating to acceleration requests: "Licensees always have the ability to file applications to amend their licenses to increase the capacity of their projects, and do not have to request acceleration of their licenses to do so."

(2) The footnote to the above statement:

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[1] 54 FR 23757 (June 2, 1989), III FERC Stats. & Regs. 30,854.

[2] 16 U.S.C. 791 a–825 r (1989).

[3] Pub. L. No. 99–495, 100 Stat. 1243 (Oct. 16, 1986).

[4] (1) Columbia River Inter-Tribal Fish Commission and Confederated Tribes and Bands of the Yakima Indians (jointly, Columbia Commission); (2) Point No Point Treaty Council (Treaty Council); (3) U.S. Department of Commerce; (4) Washington Department of Fisheries and Washington Department of Wildlife (jointly, Washington); (5) Great Northern Nekoosa Corporation (Great Northern); (6) Niagara Mohawk Power Corporation/Fourth Branch Associates (Niagara Mohawk); (7) National Hydropower Association (National Hydropower); (8) Long Lake Energy Corporation (Long Lake); (9) Trout Unlimited; (10) Edison Electric Institute (EEI); (11) Northern California Power Agency (Northern California Agency); (12) American Rivers, National Wildlife Federation, American Whitewater Affiliation, and California Save Our Streams (jointly, American Rivers).

[5] Rehearing was granted solely for the purpose of further consideration on July 7, 1989. 44 FERC ¶ 61,289. The requests for stays and waivers have been rendered moot by this order on rehearing and are therefore denied.

[6] Hydroelectric Relicensing Regulations Under the Federal Power Act, 53 FR 21844 (June 10, 1988), IV FERC Stats. & Regs. ¶ 32,461 (May 24, 1988).

[7] *See* 18 CFR 16.4 (1988).

[8] 54 FR at 23762–63.

[9] Section 16.4(a)(2) was revised to provide that, unless the Commission specified a later period, the information is to be made available no later than 90 days from the date the Commission approves an acceleration request. Section 16.4(c) specifies that the date on which an accelerated license expires will be not be less than five years plus 90 days from the date of the Commission order approving the acceleration request. These provisions afford the Commission ample flexibility when setting expiration dates, and afford ample scope for the commission to consider the burden on resources of all participants in the relicensing process.

[10] 852 F.2d 1392 (D.C. Cir. 1988).

> The Commission may, however, decline to consider new capacity amendments which are requested by an existing licensee near the expiration date of an existing license if it appears that it would be in the public interest to consider those amendments in the context of a relicensing proceeding where competing redevelopment proposals may be considered.[11]

From these statements Long Lake assumes that the Commission is now promulgating a final rule that contravenes the Kamargo decision. This is simply not so. Here the Commission is referring to an acceleration request by a licensee, not to a preliminary permit request by a potential applicant.[12] Also, it is clear from the quoted footnote that such request may be considered in the context of a relicensing when requested by an existing licensee near the expiration date of an existing license if it appears that it would be in the public interest to do so.

Contrary to Long Lake's position, this does not suggest that "the licensing of unutilized water resources at or near an existing project will take place [only] in the context of a relicensing proceeding." Nor is it "implicit" that such a project will necessarily be treated as the subject of a new license rather than as an original license.

C. Pre-filing Consultation

1. Time Limits and Extensions

The final rule requires that the initial joint meeting be held 30 to 60 days from the date of the applicant's letter transmitting the § 16.8(b)(1) information package to the resource agencies. National Hydropower requests that the Director of the Office of Hydropower Licensing (Director) be given the authority to extend the deadline for the initial joint meeting.

For the reasons discussed in the final rule, the Commission declines to permit formal extensions of the time in which to conduct the § 16.8(b)(2) joint meeting since a clear non-extendable deadline is required in order to meet the filing deadlines mandated by ECPA.[13]

In response to many comments, the final rule extended the time limits proposed in the NOPR. The final rule also modified the dispute resolution process to provide that agencies that believe that they have not been provided with all of the § 16.8(b)(1) information by the applicant may refer this issue to the Director for resolution and, if appropriate, obtain an extension of time to file their responses under § 16.8(b)(3) until after all the information is provided.

On rehearing, some commenters argue that the final rule places unduly strict time constraints on consulting agencies while others maintain that the rule is too lenient and surrenders control of the relicensing process to these agencies.

American Rivers asserts that the time requirements placed on the agencies are much more stringent than those required of potential applicants or the Commission staff. It argues that the Commission imposes an undue burden on the agencies by requiring that they quickly study the non-detailed information package and determine and provide extensive supporting documents for the study plan required by the project.

We do not agree with American Rivers' assertion that the agencies are under time constraints more stringent than the other parties. ECPA has mandated filing deadlines for the relicensing process, and all parties to this process are required to comply with these time constraints. The final rule has provided the agencies with the maximum amount of time consistent with timely preparation of the application. The regulations allow an extension of the date on which the study requests are due when the applicant has not fully complied with § 16.8(b)(1). The Commission is required to set time limits that comply with the mandate of ECPA, and we believe that the final rule imposes balanced time constraints that are fair to all parties.

Washington alleges that the final rule contains incomplete, unfair and arbitrary timing extensions. It asserts that § 16.8(b)(4) provides the possibility of an extension of the time in which an agency must respond with written comments during the first stage consultation period but the referenced paragraph, (b)(5) of § 16.8, fails to provide any mechanism for requesting an extension of time.

The regulation is not unfair, incomplete or arbitrary. It provides that agencies that believe that they have not been provided with all of the § 16.8(b)(1) information by the applicant may refer the issue to the Director for resolution. In that circumstance, the Director can grant the agency an extension of time to file its response under § 16.8(b)(4).[14] If an agency and applicant agree that more time is needed to provide all the information required by § 16.8(b)(1), a short extension of time may be requested from the Director. When there is no agreement on the need for an extension of time to request a study, or on the need for a study, the dispute resolution process should be used.

In comments on the NOPR, Long Lake urged the Commission to specify that an agency that fails to adhere to the relicensing schedules and deadlines should "be deemed to have waived its rights to further consultation" or be allowed to rebut this waiver by showing that: (a) Particular information was required before it could complete consultation; (b) the agency asked the applicant in a timely manner to supply the information; and (c) the applicant did not do so.[15]

Long Lake repeats these recommendations in its request for rehearing and expresses dismay that the Commission not only failed to accept the recommendations but seemingly adopted regulations in the opposite direction. Long Lake believes that this will inevitably cause the Commission to surrender control of relicensing to the consulting agencies, and that the licensing process will be delayed to accommodate these agencies.

Contrary to the fears of Long Lake, a resource agency that fails to comply with a consultation provision will not be able to interfere with a potential applicant's ability to file an application on time. An agency cannot prevent an applicant from holding the initial joint meeting by refusing to attend, but that same agency would not then be prohibited from submitting written comments pursuant to § 16.8(b)(4). Studies requested after the conclusion of first-stage agency consultation are subject to the dispute resolution process. Additionally, an application will not be found deficient if those studies are not completed prior to filing an application. Final action on the merits of the application will be delayed until completion of any additional studies deemed necessary by the Director or the Commission.

As stated in the final rule, the Commission believes that exclusion of agencies from the consultation process for failure to meet consultation deadlines would be inconsistent with the Commission's obligations under the FPA and other statutes to consult with,

[11] 54 FR at 23763.

[12] Kamargo neither mandates nor precludes any particular procedure for considering development of unused water resources, and the final rule does not foreclose any of the alternatives permitted by Kamargo.

[13] 54 FR at 23770.

[14] 54 FR at 23771–72.

[15] *See* Comments of Long Lake Energy Corporation on Hydro Electric Relicensing Regulations under the Federal Power Act, September 8, 1988 at 19–20.

and consider the views and recommendations of, these agencies.[16] But, as discussed above and in the final rule, the regulations contain adequate measures to ensure that the consultation process cannot be used to delay filing of the application.

2. Notice of Meetings

The final rule provides that prior to holding a meeting with a resource agency other than the initial joint meeting, a potential applicant must provide the Commission, and each resource agency having an area of interest, expertise, or responsibility similar or related to that of the resource agency with which the potential applicant is to meet, with written notice of the time and place of each meeting and a written agenda of the issues to be discussed at least 15 days in advance of the meeting.

National Hydropower and EEI request reconsideration of this requirement. National Hydropower asserts that the requirements of this section place an unrealistic restraint on the parties. It also suggests that communication between an applicant and an agency could be an exercise of a party's First Amendment rights to petition the government for redress of grievances. It claims that the Commission lacks authority to dictate the conditions under which either a federal or state agency can meet with an applicant or an applicant's employees or consultants. EEI argues that the regulation is indefinite since it does not set any limit as to time or subject matter, and that it fails to define "meetings."

Both stress that it is important that applicants, their employees and consultants be able to meet with resource agencies to communicate freely outside of the constraints of formal meetings. They assert that they have been involved in such meetings with respect to licensing and relicensing problems for some time, and argue that the Commission has failed either to establish that such meetings are problematic or to articulate a reason for the imposition of these restrictions.

Nothing in the final rule in any way impinges on the rights (constitutional or otherwise) and ability of any party to communicate its views to the Commission and to other governmental entities involved in the relicensing process. Such communications, however, must be conducted in an orderly process that enables the other participants in that process to perform their own responsibilities in a timely manner. We believe that we have fashioned a reasonable process whereby applicants will have ample opportunity to conduct the meaningful intensive consultation they need to prepare their applications while still affording the governmental entities in the consultative process a reasonable opportunity to derive the information they need in a timely manner that enables them to carry out their own responsibilities in that process.[17]

EEI is also concerned that the minor contacts allowed are not specified. The Commission clearly stated that the regulation in question does not apply to minor contacts between a potential applicant and a resource agency.

The Commission declines to provide either an exhaustive list or a definition of minor contacts, because it would be impractical to do so.[18] The Commission noted that the presence of Commission staff at consultation meetings should encourage accommodation of interests and generally support the consultation process. This requirement will also be of benefit to interested resource agencies, since the notice provision will give them an opportunity to attend meetings on topics relevant to their areas of expertise. The Commission declines to revise this regulation because it believes that the additional duty imposed on applicants is not unduly burdensome in relation to its benefit to the process as a whole.

3. Justification for Requested Studies

In the final rule, the Commission revised § 16.8(b)(4) to require that resource agencies justify their requests for studies and the use of study methodologies. Specifically, these provisions require that the resource agencies: identify necessary studies; explain the basis for the studies; discuss resource issues and the agency's goals and objectives for this resource; explain why the study methodology recommended by the agency is the most appropriate; document the use of this methodology as a generally accepted practice; and, finally, explain how these studies are related to the agency's resource goals and objectives.

American Rivers, Washington and the U.S. Department of Commerce (Commerce) allege that these requirements shift the burden of proof from the proponents of a project to the resource agencies. They argue that the regulations require that the agencies prove that a project will have a negative effect on the environment rather than requiring that the proponents of the project prove that the project will not have a negative effect. They assert that the applicant is obligated to prove to the Commission, through the study, license application and application amendment process, that its application is best adapted to serve the public interest.

Washington and Commerce assert that the requirements of § 16.8(b)(4)(iii)–(vi) are a substantial change from the NOPR. They request that these provisions either be deleted or included in a reissued NOPR to provide interested parties an opportunity to comment on the changes.

Procedures governing the consultation process are a central consideration of this proceeding. Moreover, as the Commission stated in the final rule, these amended provisions were added in response to comments made on the NOPR. Thus, they clearly fall within the scope of the rulemaking. Further, interested persons, including Washington and Commerce, have had an opportunity on rehearing to comment on the changes adopted in the final rule. The Commission determined in the final rule that these provisions would provide potential applicants with a better understanding of agency requests and should reduce the potential for disputes. The Commission believes that these revisions are necessary to focus the details regarding studies early in the consultation process, and thus declines to make the requested changes. Section 16.8(b)(4) requires resource agencies to explain study requests; it does not require that they assume the burden of proving whether or not a project will harm the environment. A resource agency requests that a study be done to determine what impact a project will have. The proponent of a project conducts the requested study for the same reason. It remains for the Commission to weigh the various study results and other factors to determine if a project is in the public interest.

EEI suggests that the regulations be revised to provide that the justification standards that apply to study requests made during the first stage of consultation are also applicable to requests made during the second stage of consultation. We agree. The Commission intended that the required explanation be applied to all study requests made in any stage of consultation. In order to prevent confusion, the regulations are revised herein to provide that paragraphs (iii)–(vi) of § 16.8(b)(4) apply to all study requests.

[16] 54 FR at 23797–88.

[17] In this regard, requests to either decrease the 15 day notice period or to use telephone notification of meetings, on which all parties agree, should be addressed to the Director.

[18] 54 FR at 23769.

4. Dispute Resolution

The final rule provides a mechanism whereby the Director will resolve disputes that arise between potential applicants and resource agencies during the pre-filing consultation process. The Commission declined to allow appeals to the Commission from certain disputes resolved by the Director, or to specify a standard to guide the Director in dispute resolution.

EEI requests reconsideration of these decisions. It suggests that should the Commission decide to establish a standard to guide the Director, the standard should be the "arbitrary and capricious" standard that the Administrative Procedure Act imposes on the Commission.[19] The Commission declines to make the suggested revisions.

The Director's decisions during the consultation process are not final or binding on the merits of the application. They merely define the parameters of the Director's latitude in subsequently rejecting a filed application on grounds that it is incomplete, since he cannot preclude the filing of an application as incomplete if he had previously determined that the missing data are unnecessary for such filing. Both the Director and the Commission retain the right to determine, after the application has been filed, that such data are necessary to proper consideration of the application on its merits. Insertion of an interlocutory appellate process before the application has been prepared and filed could seriously burden and delay the application-preparation process, and would present the Commission with highly technical decisions to be made on a very thin and amorphous record, in the context of a proceeding that has not yet been formally commenced.

The Commission reiterates that it does not believe it is necessary to specify the standard the Director will use in resolving consultation disputes. Clearly, his decisions will be made case-by-case on the basis of whether the requested study is reasonable and necessary to evaluate the impact of the proposal on the resource goals and management objectives of the resource agencies, whether it is a generally accepted practice for potential applicants to use the methodology requested by an agency, and whether the study will provide the Commission with sufficient information to make an informed decision. Final actions on filed applications may be appealed to the Commission.

[19] 5 U.S.C. 551 *et seq.* (1988).

5. Independent Studies

In the proposed regulations, the Commission provided that all applicants must conduct their own studies unless an applicant and a competitor agree to do otherwise. The Commission also proposed that applicants and competitors not be obliged to share results of studies. The Commission reconsidered these provisions in the final rule and determined that they were inconsistent with existing policy because the Commission will not, in fact, reject an application that contains material copied from another application.

National Hydropower argues that §§ 16.8(c)(1) and 16.8(c)(2) of the proposed regulations reflected current Commission policy and should be restored. They assert that a clear policy with respect to this issue is now necessary because, without these regulations, applicants could have their decisions to pursue independent studies challenged by competing applicants who are interested in pursuing joint studies.

The Commission's determination on independent studies was thoroughly discussed in the final rule, [20] and the rehearing requests do not raise any new factors that would cause us to reconsider that determination. The proposed regulations would have been inconsistent with existing Commission policy as set forth in *WV Hydro, Inc. and the City of St. Marys, West Virginia*,[21] which holds that the Commission will not reject an application for containing material duplicated from another application. As discussed in the final rule, the Commission is not requiring potential applicants to provide copies of their studies to potential competitors, and the Commission encourages all applicants to do their own work.

6. Baseline Studies

In the final rule the Commission declined to revise § 16.8(c)(1) to require potential applicants to collect information about, and study the condition of, resources as they existed in the project area prior to construction of the existing project. The Commission concluded that it would be inappropriate to require applicants to engage in the highly speculative exercise of ascertaining the status of resources that existed in an area prior to the construction of a 50-year old project.

American Rivers, Washington, and Commerce, joined by Columbia Commission and Treaty Council, assert that the collection of baseline data is necessary to provide resource agencies with a basis on which to assess project impacts. They claim that the final rule either improperly eliminates collection of baseline information or improperly defines the baseline for assessing project impacts and obligations. They assert that the collection of baseline data that will provide perspective on the project's effects on fish and wildlife agencies to comply with the mandate of EPA section 10(j).

The rehearing requests repeat the arguments made in response to the NOPR, arguing that it is not possible to determine the impact of a project without a study of the area in its "pristine" pre-project state. As the Commission stated in the final rule,[22] when enacting ECPA, Congress specifically rejected the idea that the Commission should ignore existing projects and assess environmental values pursuant to a hypothetical pre-project baseline environment.[23]

Confederated Tribes and Bands of the Yakima Indian Nation v. *FERC* (Yakima),[24] clearly requires the Commission to evaluate resource impacts prior to licensing. Nothing in that decision, however, either requires the Commission to pretend that current projects do not exist or requires applicants to gather information in an attempt to recreate a 50 year old environmental base upon which to make present day development decisions.

The requests for rehearing have not presented any arguments that were not previously considered. For the reasons discussed in the final rule, the Commission declines to revise the rule

[20] 54 FR at 23774.

[21] 45 FERC ¶ 61,220 (1988).

[22] 54 FR at 23775–76.

[23] The Department of Commerce implies that the statement in footnote 149, taken from the ECPA Conference Report, is somehow taken out of context. The entire quote, when read in context, fully supports the Commission's position that ECPA does not require that the Commission "ignore existing projects and assess environmental values pursuant to a hypothetical pre-project baseline environment."

The text of the complete quote from the ECPA Conference Report reads as follows: "In exercising its responsibilities in relicensing, the conferees expect FERC to take into account existing structures and facilities in providing for these nonpower and nondevelopmental values. No one expects FERC to require an applicant to tear down an existing project. But neither does anyone expect "business as usual". Projects licensed years earlier must undergo the scrutiny of today's values as provided in this law and other environmental laws applicable to such projects. If nonpower values cannot be adequately protected, FERC should exercise its authority to restrict or, particularly in the case of original licenses, even deny a license on a waterway." H.R. Rep. No. 934, 99th Cong., 2d Sess. 22 (1986).

[24] 746 F.2d 466 (9th Cir. 1984), *cert. denied*, 471 U.S. 1116 (1985).

to require applicants to routinely conduct baseline studies.

7. Post Licensing Studies

The final rule provides for post-construction monitoring studies that can only be conducted after construction or operation of proposed facilities to refine project operations or modify project facilities.

American Rivers argues that post licensing studies should not be allowed, and asserts that the Commission's reliance on such studies could mean that there had not been a proper assessment of the impacts of a project prior to licensing. It contends that the final rule allows this practice to continue and consequently violates the holding in Yakima, that the Commission resolve fish, wildlife and other resource issues prior to licensing. In particular, American Rivers suggests that the Commission might "run afoul" of Yakima if it fails to follow its own regulations and has not truly assessed the impacts of a project prior to licensing. It advocates a "bright line" rule that would require that all studies that can be done before licensing must be done and only studies that cannot be done at that time be allowed to be completed subsequent to licensing.

Notwithstanding American Rivers' argument, the Commission does comply with its own regulations. The Commission is well aware that Yakima requires it to evaluate resource impacts prior to licensing, and the regulations clearly require that "a potential applicant must complete all reasonable and necessary studies and obtain all reasonable and necessary information requested by resource agencies* * *" [25]

The Commission will continue to include license conditions requiring further studies and actions. Such studies enable the Commission to assess the effectiveness of mitigation measures; to fine-tune project facilities and operations; to secure information that cannot be obtained prior to license issuance; or, to address new circumstances that may arise in the future. Such conditions are appropriate as long as they are not used as a substitute for reasoned pre-licensing evaluation of fishery and other issues.

8. Cumulative Impacts

In the final rule, the Commission clearly delineated its policy on comprehensive plans. The Commission revised § 16.8(f)(6) to explain that the comprehensive plans intended to be covered by this provision are those referenced in section 10(a)(2)(A) of the FPA [26] as defined by the Commission's regulations.[27] The Commission also requires that applicants indicate whether any relevant state or federal resource agency has evaluated the consistency of the proposed project with any such plan.

The Commission stated that it will fully consider all relevant water quality issues and will hold evidentiary hearings if material issues of fact are in dispute. Further, during the agency consultation process, agencies can request that applicants supply information related to the project that is needed to assess cumulative environmental impacts. The Commission also stated that cumulative impacts will be examined during the National Environmental Policy Act [28] process when appropriate.

American Rivers asserts that *National Wildlife Federation* v. *FERC*,[29] requires the Commission to evaluate the cumulative environmental impacts of a proposed license and to ensure that applicants conduct studies and collect sufficient information to allow the Commission to evaluate those cumulative impacts. American Rivers contends that, in order to comply with this decision and to provide a sufficient basis for relicensing in accord with a comprehensive plan for each waterway, the regulations should require applicants to develop such studies and information, both as a part of the pre-filing consultations with resource agencies and as a part of new license applications. It argues that the applicant may be in the best position to collect such information. American Rivers is particularly concerned by the statement in the final rule that "a potential applicant would not be responsible for conducting studies to gather data on other projects that may be necessary to assess cumulative environmental impacts of those projects and the potential applicant's project."[30]

The Commission is well aware of its own responsibilities to consider cumulative impacts and comprehensive plans. The Commission believes that these responsibilities can best be met through the processes discussed in the final rule, as summarized above. When several projects are involved, the Commission will evaluate what data are needed with respect to each of the projects to determine their cumulative impacts, and the Commission will coordinate the collection of that data. The Commission encourages licensees to cooperate with the agencies by conducting all studies which may be appropriate.

9. Privileged Treatment of Pre-Filing Submissions

The final rule provides potential applicants with a mechanism to keep study results and technical information about their proposals free from wrongful appropriation in those limited situations where exemption from disclosure is justified under the Freedom of Information Act (FOIA). The Commission's intention is that any privileged treatment afforded to submitted material will expire upon the filing of the application to which it pertains. All requests for privileged treatment will be handled in accordance with § 388.112 of the Commission's regulations, which does not guarantee non-disclosure.[31]

National Hydropower is concerned that the final rule provides for public participation in the initial joint meeting and imposes no obligations on the agencies to treat applicants' plans as privileged.

The Commission responded to this concern in both the NOPR and the final rule. Non-disclosure provisions apply only to information released by the Commission. The Commission encourages resource agencies to consider the Commission's determination that certain pre-filing consultation information may be exempt from disclosure, but notes that other Federal and state agencies have their own regulations and procedures governing the release of information.[32]

10. Public Participation

The final rule provided that members of the public may attend and participate in the § 16.8(b)(2) initial joint meeting with resource agencies.

American Rivers is concerned that the public is being excluded from participation in the second stage of consultation, which it claims is a critical point at which the agencies and the applicant meet to attempt to reach agreement on the applicant's plans. Because of this exclusion, it argues, the public will not be able to comment on the results of the consultation until the application has been filed with the Commission.

[25] *See* 18 CFR 16.18(c)(1) (1988).

[26] 16 U.S.C. 803(a)(2)(A) (1988).

[27] *See* 18 CFR 2.19 (1988).

[28] National Environmental Policy Act of 1969, 42 U.S.C. 4321–4370(a) (1982).

[29] 801 F.2d 1505 (9th Cir. 1986).

[30] 54 FR at 23778.

[31] *See* 18 CFR 388.112 (1988).

[32] Changes have been made in § 16.8(g) to conform this section with § 388.112 of the Commission's regulations dealing with requests for privileged treatment of documents submitted to the Commission.

Commerce is concerned that the procedures have been limited in order to serve the purposes of the applicant and to downplay the significance of the pre-licensing proceedings. Trout Unlimited asserts that groups similar to Trout Unlimited are composed of individuals with considerable experience and expertise who can make significant contributions to the relicensing process. It requests that the regulations provide for representatives of such groups to participate formally as equals with state agencies, and asserts that this would provide the major benefit of allowing agreements to be reached on a local level. Trout Unlimited argues that statements that the state agencies are the proper representatives of the public are unacceptable, since if such agencies were totally efficient in representing the public interest there would be no groups like Trout Unlimited.

In general, American Rivers, Commerce, and Washington, joined by Treaty Council and Columbia Commission, argue that, contrary to the final rule, an administrative proceeding clearly commences with the filing of a notice of intent. They assert that the fact that ECPA requires that the notice of intent be filed five years before the expiration of the original license and that the project records be open at the same time demonstrates that Congress sought to ensure that the Commission would begin proceedings on the project. They claim that the final rule establishes a scheme which indicates the existence of a proceeding, citing the expansion of the consultation process [33], the creation of the dispute resolution process [34], and the requirement that certain filings be made in accordance with the Commission's Rules of Practice and Procedure.[35]

Commerce and Washington are concerned that the relicensing process is "front-ended" and that important decisions that affect the outcome of relicensing will be made before an application is filed. They contend that the pre-filing consultation process is similar to the preliminary permit phase for a license application under section 4(f) of the FPA, which is always considered to be a separate administrative proceeding by the Commission and subject to the intervention and other provisions of the Commission's Rules of Practice and Procedure.[36] The Department of Commerce argues that since there is a dispute resolution process and ongoing contact between the applicant and the Commission, there is in fact an administrative proceeding.[37]

In sum, these parties argue on rehearing that a formal proceeding has begun as soon as a notice of intent has been filed under § 16.6, and that all interested public parties must be allowed either to intervene formally in that proceeding or to comment informally, and to participate in meetings and have access to project sites.

We disagree. The formal licensing process, like all other case-specific proceedings before the Commission that are initiated by an applicant, commences with the filing of an application. Prior to that event, no formal proceeding exists as there is no matter before the Commission requiring it to act to grant or deny rights or obligations.

Pre-filing consultation is in no way comparable to a preliminary permit proceeding. The application for a preliminary permit initiates an administrative proceeding which ends when the permit is issued. A preliminary permit provides priority for an application for a license, and a new administrative proceeding is initiated if and when an application for the license is filed.

We reject the argument that the pre-filing consultation requirements adopted in the final rule have somehow transformed the application process so as to accelerate the point at which the proceeding formally commences. The pre-filing consultation process *per se* is not new—it was in the regulations as a predicate requirement for filing applications for both an original license and a relicense.[38] The final rule modified those requirements to the relicensing process, and codified them in a separate place in the regulations. Because the relicensing process has statutorily mandated deadlines, which deadlines are driven by the impending expiration of a license for an extant project, it was necessary to refine the pre-filing consultation process for relicensing by establishing an orderly sequence of interim steps and deadlines. But these are merely refinements designed to adapt the already existing pre-filing consultation process to the peculiar time constraints of relicensing.

Nothing in the FPA or ECPA requires that the Commission provide for formal public participation in the consultation process that precedes a formal license application proceeding. Indeed, FPA section 15 as amended by ECPA contains specific provisions requiring advance notice to the public of an existing licensee's intent to file an application for new license. It also requires that extensive data pertaining to the project be made available to the public at the time of the advance notice. Yet Congress did not accompany these provisions with an expansion of the public's existing right to participate as intervenors in formal license application proceedings.

To the extent that there is a statutory requirement of consultation between the application and particular governmental agencies, that requirements reflects a Congressional recognition that the consultation is pursuant to the governmental responsibilities of these agencies. They are entitled to perform those governmental consultative processes pursuant to their own procedures. In the context of proceedings that have not yet formally commenced, and applications that have not yet been completed or filed, it would be presumptuous at best for this Commission to attempt to impose requirements of third party participation on those agencies in the performance of their statutorily mandated functions.

We also note that applicants who are not licensees are not required to file such notices of intent. Thus, if the ability of the public to become intervenors in a relicense application proceeding were to be triggered by the notice of intent that the existing licensee is required to file, only existing licensee applicants would have to respond to the demands of the public participants while their competitors would not. The Commission does not believe this would be equitable or consistent with the competitive spirit underlying ECPA's amendments to the FPA.

We also firmly reject the argument that the final rule "front loads" the decisional process. The decisions on relicensing are made by the Commission, in its consideration of the application after it has been filed. All interested persons have full opportunity to participate in that decisional process, and that is the only decisional process. Agreements made by the applicant and consulting agencies with respect to what the applicant will put in its application

[33] 18 CFR 16.8(a) *et seq.* (1988).
[34] 18 CFR 16.8(b)(5)(i) (1988).
[35] 18 CFR 16.8(b)(5)(iii) (1988).
[36] 18 CFR part 385 (1988).

[37] Washington and the Department of Commerce assert that Platte River Whooping Crane Critical Habitat Maintenance Trust v. FERC, 876 F.2d 109 (D.C. Cir. 1989), discussed below, indicates that an administrative proceeding may commence prior to relicensing. A careful reading of Platte River reveals no basis for this assertion.

[38] The consultation requirements are in § 4.38. Prior to adoption of the final rule in this docket, those requirements applied to both original licenses and relicenses.

have no binding effect on the Commission, because the application itself is merely the starting point for the Commission's consideration of the applicant's proposal.

In response to the comments on the NOPR, the Commission adopted a requirement of full public participation in the initial joint meeting, at the commencement of the pre-filing consultation process. This will serve to alert the applicant and the consulting agencies to the public's concerns at the outset of that process.

The Commission's current relicensing process also provides numerous other opportunities for meaningful public participation. Following the acceptance of a new license application, the Commission publishes public notice of the application. The notice contains pertinent details describing the location, design, and mode of operation as well as other facts related to the proposed project that can be used to determine the potential impact the proposed project may have on the environment. The notice also provides enough information for the public to assess whether riparian or other property rights will be affected by the proposed project.

The public is given an opportunity to meaningfully participate in the license proceeding as parties by filing a motion to intervene within the time prescribed in the public notice. Becoming a party in a license proceeding entitles one to receive all filed documents in the proceeding, and also ensures the right to seek an appeal or rehearing of any Commission action that may be perceived by a party to be adverse to its interest. If rehearing is sought and then subsequently denied by the Commission, a party has a right to seek judicial review of the Commission's decision.

In the relicensing context, an existing licensee is required to notify the Commission five years prior to the expiration of its license whether or not it will apply for a new license for the project. Concurrent with this notification, the existing licensee must make extensive information about the project available for public inspection at its business offices.

Upon receipt of the existing licensee's notice of intent, and years before a formal license applicaiton is filed at the Commission, the Commission issues a public notice in the local newspaper that identifies the project and states when and where the project information is available. Any interested person or entity may at this time contact the applicant, and indeed is encouraged to do so in order to find out more about the project. In addition, interested persons or entities are encouraged to approach the state or Federal resource agencies to assist in formulating possible solutions to potential problems.

Furthermore, to make the Commission aware of the issues once an application has been filed, private entities are encouraged to forward to the Commission any written correspondence between them and potential applicants and resource agencies. After the filing of the license application, private entities, to the extent they believe concerns have not been addressed, can file comments or interventions with the Commission articulating their position and explaining why they believe additional studies should be performed or additional issues addressed.[39]

The failure of a resource agency to request the preparation of a certain study does not mean that the study will not be done. Applicants are required by the Commission's regulations governing the content of applications [40] to consider and address all relevant resource issues in their applications. The failure of an agency to request a study regarding a resource will not excuse an applicant from addressing that resource issue, either in its application or in response to a Commission deficiency or additional information letter. Thus, potential applicants will be consulting with various interest groups informally in order to adequately address resource issues of interest to these groups, and the public is encouraged to bring any issues not fully covered to the attention of the Commission.

Finally, relicensing proceedings are no different from original licensing proceedings in terms of Commission consideration of agreements between applicants and resource agencies regarding environmental protection, mitigation, and enhancement measures. In each case, the Commission will review any agreed-upon measures and independently determine, pursuant to the requirements of the FPA, whether such measures are appropriate and in the public interest. The Commission may decline to incorporate the measures into a license if it concludes that they are not appropriate, and may adopt different measues in lieu thereof.

For all of the reasons discussed above, we conclude that a rule requiring formal public participation throughout the prefiling consultation period before an acceptable license application is filed is neither legally required nor an appropriate policy. In the final rule, we adopted a requirement of full public participation at the initial meeting in order to afford the public a meaningful opportunity to learn more about the project and to identify resource concerns at the earliest possible date. For the reasons discussed at length above, we decided not to extend that requirement to all of the pre-filing consultation meetings. We have carefully reconsidered our determination in light of the arguments presented in the requests for rehearing, and conclude that the process we adopted in the final rule is reasonable and strikes an appropriate balance.

11. Indian Tribes

In the final rule, the Commission discussed the recommendations that Indian tribes be given a role in the consultation process that is similar, if not equivalent, to that of the resource agencies.[41]

The Commission declined to require that potential applicants consult with Indian tribes as part of the formal consultation procedures established by the regulations. The Commission concluded that Indian tribes would have sufficient opportunity to make their concerns and views known by being able to participate as members of the public in joint public meetings with resource agencies. The Commission acknowledged that the amendments made by ECPA to the FPA require the Commission to solicit and consider the views and recommendations of Indian tribes but concluded that nothing in ECPA or its legislative history require that Indian tribes be made a part of the consultation process between potential applicants and resource agencies.

The Columbia Commission, Treaty Council, and Commerce request rehearing of the Commission's decision not to include Indian tribes in the formal pre-filing consultation processes.

Columbia Commission argues that the purpose of the revised three-stage consultation process under § 16.8, which is to ensure prompt and responsible consultation resulting in the timely filing of complete applications, will be

[39] The Commission recognizes that in some cases potential applicants and resource agencies may refuse to consider private entities' suggestions regarding studies. However, the Commission believes that the relicensing scheme established by ECPA provides both potential applicants and resource agencies with incentives to adequately address the concerns of private entities during consultation. Therefore, the situations where the concerns of private entities are ignored should be minimal.

[40] *See* 18 C.F.R. 4.41, 4.51, and 4.61 (1988). These provisions are applicable to applications for new license. See 18 CFR 16.9(b)(2) (1988).

[41] 54 FR at 23782–83.

frustrated if applicants are not required to consult with Indian tribes.

Columbia Commission also argues that the FPA, ECPA and the doctrine of tribal sovereignty require that tribes be treated in a manner similar to federal and state agencies. Citing *United States* v. *Wheeler*,[42] and *Worcester v. Georgia*,[43] it asserts that the ECPA requirements that establish the substantive and procedural role of Indian tribes are merely a codification of one of the central principles in the field of Federal Indian law—that the powers exercised by Indian tribes stem from the inherent power of limited sovereignty which has never been extinguished. Columbia Commission asserts that it is well settled that there are three separate sources of sovereignty within the Federal constitutional system: state, federal, and tribal.

Commerce contends that the resource management agencies of federally recognized tribal governments should be included in the definition of "resource agency" in § 16.2(d). It states that many of the Indian tribes in the Pacific Northwest and elsewhere have legally protected and recognized interests in fish and wildlife resources that have been granted through treaties, statutes, executive orders, and reservations of lands and water rights,[44] and that these tribes have established their own management resource agencies that work closely with state agencies and devote substantial efforts to the conservation and effective utilization of these resources.[45] It argues that the omission of procedures that recognize the interests of Indian tribes is inconsistent with section 10(a) of the FPA.

Treaty Council argues that the exclusion of tribal management agencies from the formal consultation process prevents "equal consideration" for fish and wildlife required by ECPA, since without the input from tribal resource management agencies the economic and cultural significance of fishing and hunting to Indian tribes will not be fairly addressed.

On rehearing, we will amend the regulations to include appropriate tribal resource management agencies in the formal consultation process. We do not construe the tribes to be government agencies. However, to the extent that certain tribes have legally established responsibilities for the management of fish resources, we agree that they should participate fully in the pre-filing consultation process.

A definition of "Indian tribe" has been added to make clear what entities are entitled to participate in the pre-filing consultation process. The definition includes all Indian groups that are united under one governing body, inhabit a particular and distinct territory, and are appropriately recognized as Indian tribes by the United States.[46] A nexus test is also included in the definition, so that consulted Indian tribes must have tribal (as distinct from individual or social) rights that are or have been affected by the project. In other words, where a project adversely affects the harvest of anadromous fish or is located within a particular reservation to which an Indian tribe has treaty rights, that tribe would be able to participate in the pre-filing consultation process.[47]

The definition is as follows:

(1) "Indian tribe" means, in reference to a proposal to apply for a license or exemption for a hydropower project, a separate and distinct community or body of people of the same or similar aboriginal race historically inhabiting areas within the United States that:

(i) Is united in a community under one leadership or government constituted by law or long-standing custom;

(ii) Inhabits a particular territory;

(iii) Is recognized by treaty with the United States, by federal statute, or by the U.S. Secretary of the Interior; and

(iv) Whose legal rights as as tribe may be affected by the development and operation of the hydropower project proposed, as where the operation of the project could interfere with the management and harvest of anadromous fish or where the project works would be located within the tribe's reservation.

We reach this determination solely as a matter of policy, and without expressing any opinion on the specific legal status of any tribes. As a practical matter, tribes that have responsibilities for the management of fish resources should participate in the pre-filing consultation process in the same manner as government agencies who have such responsibilities. This will facilitate the pre-filing consultation process. We have revised the final rule accordingly.

Inasmuch as some applicants are well into the pre-filing consultation process, we have also added a transition provision to avoid delay and disruption of that process. Paragraph (j)(6) has been added to § 16.8 to provide that potential applicants who have initiated the consultation process in accord with § 16.8 will have 45 days from the date of issuance of this order to initiate consultation with Indian tribes that meet the criteria of § 16.2(f). Questions regarding the scope of this consultation should be addressed to the Director.

D. Notices of Intent From Competitors

The final rule provides that an application will not be processed until the final amendment deadline except to the extent of determining whether it conforms to the Commission's filing requirement (*i.e.*, the processing stage at which an acceptance letter is sent), unless the applicant indicates in its application that it waives the right to file a final amendment pursuant to section 15(c)(1) of the FPA. Absent such waiver, further processing would commence only after the expiration of the final amendment deadline.

Great Northern proposes that, in response to the public notice that the application has been filed, potential competitors should be required to file a notice of their intent to file a competing application. Great Northern contends that at this time, competitors would be in a position to file such a notice of their intent since they would have to be well into the agency consultation process to comply with the rules and file an application on time. Great Northern then proposes that the Commission would delay processing an application until the time for filing a notice of intent to file a competing application had passed, and if none were filed the Commission would then proceed with the processing. Great Northern contends that this would not be anti-competitive because the competing applicant would not be filing the notice of intent until after the existing licensee had filed an application, and the existing licensee would have to file a complete application to trigger the notice of intent

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[42] 435 U.S. 313, 322–23 (1979).

[43] 31 U.S. (Pet.) 515 (1832).

[44] Certain of the Indian tribes in the Pacific Northwest have important treaty rights with respect to runs of anadromous fish in certain rivers. *See Washington* v. *Washington State Commercial Passenger Vessel Ass'n*, 443 U.S. 658 (1979); *United States v. Washington*, 759 F.2d 1353 (9th Cir. 1985); *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), *aff'd*, 520 F.2d 676 (9th Cir. 1975), *cert. denied*, 423 U.S. 1086 (1976).

[45] *See, e.g.*, Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 834 *et seq.* (1988); Pacific Salmon Treaty Act. 16 U.S.C. 3631 *et seq.* (1988); *U.S.* v. *Oregon*, 666 F. Supp. 1461 (D.Or. 1987).

[46] *See, e.g., Montoya* v. *United States*, 180 U.S. 261 (1901); F. Cohen, Handbook of Indian Law 3–19 (1982 ed.).

[47] This situation would arise where the project impedes on the migration of anadromous fish on a particular river, and the Indian tribe has treaty rights to manage or harvest some of the fish runs on that river. Another example would be where a project works is located within an Indian reservation. However, if a group of Indians objects to the licensing of a hydropower project not located on such a river or within their reservation, and the basis of their objections rests on aesthetic, recreational or other grounds shared by local residents but not rooted in rights of the tribe, the Indian group (even if it were a recognized Indian tribe for other purposes) would not be treated as an Indian tribe for purposes of the project.

requirement. Great Northern proposes this scheme in lieu of the procedure adopted in the final rule, of not processing the application until the deadline for amending it has passed unless the applicant in effect accelerates that deadline by waiving its right to file an amendment.

While Great Northern's proposal is not without some merit, on balance we prefer the process adopted in the final rule. The provision adopted therein was designed to avoid diversion of limited resources into processing applications that might later be amended. Such resources would be more efficiently utilized in processing applications that have reached the final amendment deadline. Absent waiver of the right to file an amended application, Great Northern's proposed mechanism would not solve the problem of potential waste of limited staff resources. In addition, as stated in the final rule,[48] section 4(c) of ECPA provides a potential applicant, other than the licensee, the right to file an application up to two years prior to the license expiration date without a requirement to file a notice of intent.

E. Dismissal of Applications

The final rule provides that if the Commission rejects or dismisses an application pursuant to § 4.32, the application can not be refiled if the filing deadline for a new license has expired. Therefore, if the Director rejects or dismisses an application because it is patently deficient,[49] or because the applicant fails to correct deficiencies [50] or respond to an additional information request [51] in a timely manner, the applicant cannot refile its application if the 24-month filing deadline for the project has passed.

Northern California Agency objects to this provision, contending that it could result in the forfeiture of an existing licensee's project for not having gotten the application "altogether right the first time." Northern California recommends that the Commission keep in mind the considerable complexity of a license application and requests that some mechanism for waiver or exception be provided. In the alternative, it requests that the Commission make the filing requirements for an application "crystal clear" and considerably more detailed than the current regulations.

The Commission has stated that applicants can be certain that no forfeiture will occur if they file applications that are not so devoid of the information required by the Commission's regulations as to be patently deficient, and if they fully respond to requests to correct deficiencies or supply additional information within the time periods specified in the deficiency or additional information letters. Applicants have the right to appeal any rejection or dismissal to the Commission, and such appeals, if granted, would result in the reinstatement of the application with its original filing date. This appellate process serves the same purpose as the waiver mechanism Northern California requests, in that it affords the Commission an opportunity to consider all of the circumstances involved on a case-by-case basis.

F. Waiver of Material Amendment Rule

The final rule provides that the Commission's material amendment rule (§ 4.35) [52] will not apply to applications filed under § 16.9, except that the Commission will reissue public notice pursuant to § 16.9(d)(1).

Long Lake asserts that the waiver of the material amendment rule will allow an applicant to submit an entirely new project after seeing the plans of competitors. The Commission does not anticipate that the limited period of time provided for making a final amendment will allow an applicant to conduct the consultation and studies necessary to substantially change a project. The final amendment will be primarily for the purpose of fine tuning the project. The Commission discussed this issue in the final rule, [53] and Long Lake has not raised any new matters that were not previously considered.

In the interest of consistency with the consultation requirements we have added two new paragraphs, (3)(i) and (3)(ii), with respect to consultation in the event of a material amendment. Section 16.8(3)(i) requires that an applicant consult with the relevant agencies and Indian tribes before a material amendment is filed. Section 16.8(3)(ii) provides that an applicant having any doubt as to whether a particular amendment is subject to this requirement may file a written request for clarification with the Director.

G. Standards and Factors for Relicensing

The final rule provides that when the Commission makes its determination regarding whether a proposal is best suited to serve the public interest, it will consider the factors enumerated in sections 15(a)(2) and 15(a)(3) of the FPA.[54]

Northern California Agency expresses concern that the Commission, in examining an existing licensee's track record, would fail to apply all of the FPA section 15(a) public interest factors to all of the actions of the licensee. In particular, it is concerned with actions taken by a licensee in reliance on FPA section 6 and actions taken by a licensee that could have an anti-competitive effect.

Northern California argues that the Commission should treat as a negative factor in the FPA section 15(a)(3)(B) evaluation, an existing licensee's past assertion of rights under section 6 of the FPA to block a superior use of a nearby project's water supplies. The Commission declines to adopt this suggestion. As the Commission stated:

> An existing licensee should not be penalized for legitimately relying on the section 6 prohibition against unilateral alteration of licenses, to protect its ability to operate its project in the manner allowed and required by the existing license. An existing licensee's reliance on FPA section 6 will not be considered as a negative factor under the section 15(a)(3)(B) evaluation. Thus, while an existing licensee's compliance with specific obligations or responsibilities under its license will be examined under section 15(a)(3), its exercise of legitimate rights provided by the license or the FPA will not.[55]

Northern California Agency asserts that the Commission should subject all applications for relicense to a comparative evaluation on the antitrust provision of section 10(h) of the FPA.[56] Northern California Agency expressed the same comment in response to the NOPR, and the Commission responded to it in the final rule: "the clear intent of Congress was that the Commission not subject applications to comparative evaluation on antitrust matters." [57]

H. Joint Applicants

The final rule specifies that an existing licensee filing an application for new license in conjunction with a new entity will not be considered an existing licensee for the purposes of the

[48] *See* 18 CFR 16.9(b)(1) (1988).
[49] *See* 18 CFR 4.32(e)(2)(i) (1988).
[50] *See* 18 CFR 4.32(e)(1)(iii) (1988).
[51] *See* 18 CFR 4.32(g) (1988).

[52] Under § 4.35 of the Commission's regulations, when amendments to applications that are considered "material" are filed, the filing date of the initial application is deemed to be the date the material amendment is filed for a variety of purposes, including the determination of whether the initial application was timely filed vis-a-vis competition deadlines.
[53] 54 FR at 23787.

[54] Section 15(a)(2) of the FPA, 16 U.S.C. 808(a)(2) (1988); section 15(a)(3) of the FPA, 16 U.S.C. 808(a)(3) (1988).

[55] 54 FR at 23,794.
[56] 16 U.S.C. 803(h) (1988).
[57] 54 FR at 23,792.

insignificant differences provision of section 15 of the FPA.

Niagara Mohawk requests rehearing of this provision. In the alternative, Niagara Mohawk requests that the regulation only be applied prospectively.

Niagara Mohawk argues that there are many advantages to joint ventures between existing licensees and other parties in relicensing proceedings, noting specifically the benefits to the ratepayers of the existing licensee. It also points to the significant design modifications that Niagara Mohawk undertook, as part of a joint venture, in the Mechanicville Project in response to concerns regarding historic preservation expressed by resource agencies. It suggests that the Commission should, in some circumstances, treat joint developers as "existing licensees" for the purpose of relicensing.

Niagara Mohawk presented all of these arguments in its comments on the NOPR, and they were fully considered in the final rule. Niagara Mohawk has not raised any new issues of fact, law or policy that persuade us to alter that determination.

In its request for rehearing, Niagara Mohawk reiterates its previous suggestion [58] that if the Commission adopted the proposed rule it should only be applied prospectively since retroactive application of a rule is foreclosed by the express terms of the Administrative Procedure Act.

The arguments about retroactive rulemaking are inapposite in this situation. In *Georgetown* v. *Bowen*,[59] on which Niagara Mohawk relies, the Secretary of Health and Human Services issued hospital cost limit regulations in 1974, pursuant to a statute enacted in 1972. Then, without any subsequent change in the underlying legislation, in 1981 the Secretary issued amended regulations; in 1983 a court invalidated the amended regulations for lack of proper notice and comment before their issuance; and in 1984 the Secretary reissued the amended regulations, making them retroactive to 1981. Order No. 513, however, adopted regulations that became effective only after their issuance and, much more to the point, the relicensing regulations do not replace or supersede previous regulations. To the contrary, the relicensing regulations implement ECPA, and in that sense constitute regulations of first impression. The enactment of ECPA has made it necessary for the Commission to determine whether joint applicants can qualify as an existing licensee when one of the joint applicants is a new entity. The Commission has now done so. Its determination necessarily applies to all relicense applicants, regardless of when they filed their applications, as long as those applications are currently pending. Congress, in ECPA, did not provide for any "grandfathering" treatment of joint applicants, and it would not be appropriate to do so by regulation. This is not retroactive rulemaking; it is implementation of a new statute. Therefore, Niagara Mohawk's request for rehearing on this issue is denied.

I. Annual Licenses

American Rivers and Northern California Agency request that the Commission modify the final rule to conform with the holding in *Platte River Whooping Crane Critical Habitat Maintenance Trust* v. *FERC* (Platte River),[60] which was issued two days after the final rule in this docket.

In that case, the Trust sought review of an order of the Commission declining its request that the Commission undertake an assessment of the need for wildlife protective conditions in the interim annual licenses under which the projects concerned were currently operating pending completion of relicensing proceedings. The Commission declined either to alter the license or to seek the cooperation of the Districts in arriving at consensual amendments to the annual licenses for both projects, on the ground that there was no substantial evidence on which to determine appropriate mitigative conditions. The court determined that the denial of the Trust's request that the Commission undertake an assessment of the need for wildlife protective conditions in the interim annual licenses was an abuse of discretion, and remanded the case to the Commission to conduct such an assessment.

Northern California and American Rivers request that the Commission revise § 16.18 in light of the court's decision. The Commission is adding a new paragraph (d) to § 16.18 to provide that, when issuing an annual license, the Commission may incorporate additional or revised interim conditions if necessary and practical to limit adverse impacts on the environment.

J. Nonpower Licenses

The final rule requires that applicants for a nonpower license must provide, *inter alia*, identification of the agency authorized and willing to assume regulatory supervision over the project.

American Rivers objects to this provision, contending that the requirement that an agency be willing to assume regulatory supervision over the project is inconsistent with the FPA and the Commission's long standing interpretation of the nonpower licensing process. It contends that this regulation illegally frustrates the efforts of private groups to obtain nonpower licenses that would terminate once the nonpower licensee had arranged for complete removal of the structure.

American Rivers misperceives the purpose of a nonpower license, which is to maintain Commission supervision of a project after power facilities have been removed and while the licensee obtains agreement that a state, municipality, interstate agency, or another Federal agency is authorized and willing to assume regulatory supervision over the remaining lands and facilities covered by the nonpower license.

An entity wishing to remove facilities from a waterway can recommend removal to the Commission as an alternative to relicensing. If the Commission determines that project removal is a reasonable alternative, the Commission will consider this request and balance it against the need for the facility.

K. Minor and Minor Part Licenses Not Subject to Sections 14 and 15 of the Federal Power Act

The final rule provides that the FPA section 7(a) municipal preference does not apply to minor licenses when sections 14 and 15 of the FPA have been waived.

Northern California Agency disagrees with this determination. It contends that it has been long standing Commission policy to give minor licensees the option to waive sections 14 and 15 of the FPA and, when these sections have been waived, a license can only be issued under section 4(e), to which the section 7(a) preference will apply. Northern California Agency made a similar statement in reply comments on the NOPR.

The Commission responded fully to these comments in the final rule, stating that Congress clearly restricted municipal preference under section 7(a) of the FPA to original licenses and made it inapplicable to relicensing proceedings.[61] Northern California

[58] *See* Comments of Niagara Mohawk Power Corporation and Fourth Branch Associates on Hydroelectric Relicensing Regulations Under the Federal Power Act, September 8, 1988, at 12–13.

[59] 821 F.2d 750 (D.C. Cir. 1987), *aff'd*, 109 S.Ct. 468 (1988).

[60] 876 F.2d 109 (D.C. Cir. 1989).

[61] 54 FR at 23800.

Agency has not raised any new issues that were not previously considered in the final rule, and has not persuaded us to alter the determination made therein.

L. Section 18 of the FPA

The Commission has determined that section 18 of the FPA, which confers authority on the Department of the Interior (Interior) and Commerce to prescribe fishways, is applicable to relicensing.[62] EEI [63] alleges that the Commission erred in deciding that section 18 applies to relicensing proceedings and cites to the Congressional Record [64] as providing support for this position.[65]

In the final rule, the Commission stated that it intends to discuss fishways and the procedures by which Commerce and Interior will prescribe fishways in a rulemaking proceeding that it intends to commence on section 10(j) of the FPA. The application of section 18 to the relicensing process was thoroughly discussed in the final rule,[66] which quoted extensively from the 1987 Commission decision in Lynchburg Hydro Associates (Lynchburg).[67]

In Lynchburg, the Commission addressed the scope and mandatory nature of the fishway prescription authority in the context of original licensing proceedings. In discussing the interpretation of section 18, the Commission stated that the starting point for interpreting a statute is the language of the statute itself and, absent a clearly expressed legislative intention to the contrary, that language, if unambiguous, must ordinarily be regarded as conclusive.

Section 18, which is cast in terms of fishway obligations of "licensees," does not distinguish between original and subsequent licenses, and therefore appears on its face to be applicable to relicensing proceedings. Since there is no discussion in the legislative history of whether the authority of section 18 to prescribe fishways either does or does not apply to relicensing proceedings, the Commission's adoption of the facial interpretation of the section as applying to relicensing is appropriate.

EEI also asserts that the final rule is a substantial change from the NOPR, since the NOPR did not indicate that section 18 would be applicable to relicensing. Thus, EEI requests that the Commission vacate the discussion of section 18 in the final rule. EEI's arguments are misplaced. As an administrative agency having statutory responsibilities to implement the FPA, the Commission has ample authority to interpret the statute without providing notice or soliciting legal briefs on it.[68]

M. National Environmental Policy Act Statement

The Commission determined promulgation of the rule does not require the preparation of an environmental impact statement (EIS) because the rule is procedural in nature.

American Rivers, Commerce, and Washington argue that the Commission must prepare an environmental assessment (EA) or an EIS before adopting this rule. They assert that in failing to do so the Commission failed to comply with NEPA.[69] American Rivers asserts that the rule is not merely procedural, but will result in substantive changes in the processing of hydroelectric applications.[70] Commerce asserts that the characterization of this rule as procedural is misleading since it provides new requirements that will impair the collection of information on relicensing and attempts to limit the pre-licensing role of agencies.

This rule revises procedures that govern relicensing of hydroelectric power projects. It does not, as Commerce and Washington assert, impair the collection of information or attempt to limit the pre-licensing role of agencies. It does revise some of the procedures by which information is collected, and provides an orderly procedure for pre-filling consultation. As the Commission stated in the final rule, these regulations do not authorize the construction or operation of any facility; rather, they determine the procedures by which such construction will be considered on a case-by-case basis in future proceedings.[71] Thus, no EIS is required.

For the reasons discussed above, all requests for rehearing that are not specifically granted are denied.

These revisions are effective December 26, 1989.

List of Subjects in 18 CFR Part 16

Electric power.

In consideration of the foregoing, the Commission amends part 16 of chapter I, title 18, Code of Federal Regulations as set forth below.

By the Commission.

Commissioner Tranbandt dissented in part with a separate statement attached.

Linwood A. Watson, Jr.,

Acting Secretary.

PART 16—PROCEDURES RELATING TO TAKEOVER AND RELICENSING OF LICENSED PROJECTS

1. The authority citation for part 16 continues to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a-825r, as amended by the Electric Consumers Protection Act of 1986, Pub. L. No. 99-495; Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142.

2. In § 16.2, a new paragraph (f) is added to read as follows:

§ 16.2 Definitions.

* * * * *

(f) *Indian tribe* means, in reference to a proposal to apply for a license or exemption for a hydropower project, a separate and distinct community or body of people of the same or similar aboriginal race historically inhabiting areas within the United States that:

(1) Is united in a community under one leadership or government constituted by law or long-standing custom;

(2) Inhabits a particular territory;

(3) Is recognized by treaty with the United States, by federal statute, or by the U.S. Secretary of the Interior; and,

(4) Whose legal rights as a tribe may be affected by the development and operation of the hydropower project proposed, as where the operation of the project could interfere with the management and harvest of anadromous

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[62] 16 U.S.C. 811 (1988).

[63] Request for clarification and rehearing of Edison Electric Institute on the Hydroelectric Relicensing Regulations, June 16, 1989, at 5-8.

[64] S. Rep. No. 179, 65th Cong. 2d Sess. (1917); H.R. Rep. No. 715, 65th Cong. 2d Sess. (1918).

[65] EEI cites to a debate in the House of Representatives in 1918 on a bill that was a precursor of the 1920 Water Power Act. While the legislative history cited by EEI deals with "fishways", there is no indication that the speakers considered relicensing. The legislative history of ECPA contains a statement that:

Projects licensed years earlier must undergo the scrutiny of today's values as provided in this law and other environmental laws applicable to such projects.

H.R. Rep. No. 99-934, 99th Cong., 2d Sess. 22 (1986). We are not persuaded that a discussion in 1918, on the subject of a Federal-state conflict over prescription of fishways, is germane to the application of the "scrutiny of today's values * * * to such projects."

[66] 54 FR at 23760-61.

[67] 39 FERC ¶ 61,079 (1987).

[68] The statement in the preamble to the final rule on the application of section 18 of the FPA to the relicensing process was made in response to a question on this issue from Washington. Interior and Commerce also commented on the application of section 18 to relicensing. *See* 54 FR at 23760.

[69] National Environmental Policy Act of 1969, 42 U.S.C. 4321-4370(a) (1982).

[70] American Rivers states that it is particularly disturbed by the Commission's statement implying that compliance with NEPA is unnecessary since the projects affected by this rule have been in existence for decades. The Commission neither stated nor implied that projects that have existed for decades need not comply with NEPA on relicensing.

[71] 54 FR at 23805.

fish or where the project works would be located within the tribe's reservation.

3. In § 16.8, paragraphs (a)(1), (a)(2) are revised, new paragraph (a)(3) is added, paragraphs (b)(1) introductory text, (b)(2), (b)(3), (b)(4) introductory text, (b)(4)(vi), (b)(5)(i), (b)(5)(iv), (b)(6), (c)(1) introductory text, (c)(2), (c)(4) introductory text, (c)(4)(i)(B), (c)(4)(ii), (c)(5), (c)(6) through (c)(8), (c)(9)(i), (c)(9)(ii), (c)(10)(i), (c)(10)(ii), (d)(2) introductory text, (e)(1) through (e)(3), (f) title, (f)(1), (f)(3) introductory text, (f)(3)(ii), (f)(5), (f)(6), (g), (h), and (j)(4)(iii)(D) are revised and a new paragraph (j)(6) is added to read as follows:

§ 16.8 Consultation requirements.

(a) *Requirement to consult.* (1) Before it files an application for a new license, a nonpower license, an exemption from licensing, or, pursuant to § 16.25 or § 16.26, a surrender of a project, a potential applicant must consult with the relevant Federal, state and interstate agencies, including the National Marine Fisheries Service, the United States Fish and Wildlife Service, the United States Environmental Protection Agency, the Federal agency administering any United States lands utilized or occupied by the project, the appropriate state fish and wildlife agencies, the appropriate state water resource management agencies, the certifying agency under section 401 of the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. 1341, and any Indian tribe that may be affected by the project.

(2) The Director of the Office of Hydropower Licensing or the Regional Director responsible for the area in which the project is located will, upon request, provide a list of known appropriate Federal, state, and interstate resource agencies and Indian tribes.

(3)(i) Before it files an amendment that would be considered as material under § 4.35 of this part, to any application subject to this section, an applicant must consult with the resource agencies and Indian tribes listed in paragraph (a)(1) of this section and allow such agencies and tribes at least 60 days to comment on a draft of the proposed amendment and to submit recommendations and conditions to the applicant. The amendment as filed with the Commission must summarize the consultation with the resource agencies and Indian tribes on the proposed amendment and respond to any obligations, recommendations or conditions submitted by the agencies or Indian tribes.

(ii) If an applicant has any doubt as to whether a particular amendment would be subject to the pre-filing consultation requirements of this section, the applicant may file a written request for clarification with the Director, Office of Hydropower Licensing.

(b) *First stage of consultation.* (1) A potential applicant must provide each of the appropriate resource agencies and Indian tribes, listed in paragraph (a)(1) of this section, and the Commission with the following information:

* * * * *

(2) Not earlier than 30 days, but not later than 60 days, from the date of the potential applicant's letter transmitting the information to the agencies and Indian tribes under paragraph (b)(1) of this section, the potential applicant will:

(i) Hold a joint meeting, including an opportunity for a site visit, with all pertinent agencies and Indian tribes to review the information and to discuss the data and studies to be provided by the potential applicant as part of the consultation process; and

(ii) Consult with the resource agencies and Indian tribes on the scheduling of the joint meeting and provide each resource agency, Indian tribe, and the Commission with written notice of the time and place of the joint meeting and a written agenda of the issues to be discussed at the meeting at least 15 days in advance.

(3) Members of the public are invited to attend the joint meeting held pursuant to paragraph (b)(2)(i) of this section. Members of the public attending the meeting are entitled to participate fully in the meeting and to express their views regarding resource issues that should be addressed in any application for new license that may be filed by the potential applicant. Attendance of the public at any site visit held pursuant to paragraph (b)(2)(i) shall be at the discretion of the potential applicant. The potential applicant must make either audio recordings or written transcripts of the joint meeting, and must upon request promptly provide copies of these recordings or transcripts to the Commission and any resource agency and Indian tribe.

(4) Unless otherwise extended by the Director of the Office of Hydropower Licensing pursuant to paragraph (b)(5) of this section, not later than 60 days after the joint meeting held under paragraph (b)(2) of this section each interested resource agency and Indian tribe must provide a potential applicant with written comments:

* * * * *

(vi) Explaining how the studies and information requested will be useful to the agency or Indian tribe in furthering its resource goals and objectives.

* * * * *

(5)(i) If a potential applicant and a resource agency or Indian tribe disagree as to any matter arising during the first stage of consultation or as to the need to conduct a study or gather information referenced in paragraph (c)(2) of this section, the potential applicant or resource agency or Indian tribe may refer the dispute in writing to the Director of the Office of Hydropower Licensing for resolution.

* * * * *

(iv) The Director of the Office of Hydropower Licensing will resolve disputes by letter provided to the potential applicant and the disagreeing resource agency or Indian tribe.

* * * * *

(6) Unless otherwise extended by the Director of the Office of Hydropower Licensing pursuant to paragraph (b)(5) of this section, the first stage of consultation ends when all participating agencies and Indian tribes provide the written comments required under paragraph (b)(4) of this section or 60 days after the joint meeting under paragraph (b)(2) of this section, whichever occurs first.

(c) *Second stage of consultation.* (1) Unless determined otherwise by the Director of the Office of Hydropower Licensing pursuant to paragraph (b)(5) of this section, a potential applicant must complete all reasonable and necessary studies and obtain all reasonable and necessary information requested by resource agencies and Indian tribes under paragraph (b):

* * * * *

(2) If, after the end of the first stage of consultation as defined in paragraph (b)(6) of this section, a resource agency or Indian tribe requests that the potential applicant conduct a study or gather information not previously identified and specifies the basis for its request, under paragraphs (b)(4)(i)–(vi) of this section, the potential applicant will promptly initiate the study or gather the information, unless the Director of the Office of Hydropower Licensing determines under paragraph (b)(5) of this section either that the study or information is unreasonable or unnecessary or that use of the methodology requested by a resource agency or Indian tribe for conducting the study is not a generally accepted practice.

* * * * *

(4) A potential applicant must provide each resource agency and Indian tribe with:

(i) * * *

(B) Responds to any comments and recommendations made by any resource

agency or Indian tribe either during the first stage of consultation or under paragraph (c)(2) of this section;

(ii) The results of all studies and information gathering either requested by that resource agency or Indian tribe in the first stage of consultation (or under paragraph (c)(2) of this section if available) or which pertains to resources of interest to that resource agency or Indian tribe and which were identified by the potential applicant pursuant to paragraph (b)(1)(vi) of this section, including a discussion of the results and any proposed protection, mitigation, or enhancement measure; and

* * * * *

(5) A resource agency or Indian tribe will have 90 days from the date of the potential applicant's letter transmitting the paragraph (c)(4) of this section information to it to provide written comments on the information submitted by a potential applicant under paragraph (c)(4) of this section.

(6) If the written comments provided under paragraph (c)(5) of this section indicate that a resource agency or Indian tribe has a substantive disagreement with a potential applicant's conclusions regarding resource impacts or its proposed protection, mitigation, or enhancement measures, the potential applicant will:

(i) Hold at least one joint meeting with the disagreeing resource agency or Indian tribe and other agencies with similar or related areas of interest, expertise, or responsibility not later than 60 days from the date of the disagreeing agency's or Indian tribe's written comments to discuss and to attempt to reach agreement on its plan for environmental protection, mitigation, or enhancement measures; and

(ii) Consult with the disagreeing agency or Indian tribe and other agencies with similar or related areas of interest, expertise, or responsibility on the scheduling of the joint meeting and provide the disagreeing resource agency or Indian tribe, other agencies with similar or related areas of interest, expertise, or responsibility, and the Commission with written notice of the time and place of each meeting and a written agenda of the issues to be discussed at the meeting at least 15 days in advance.

(7) The potential applicant and any disagreeing resource agency or Indian tribe may conclude a joint meeting with a document embodying any agreement among them regarding environmental protection, mitigation, or enhancement measures and any issues that are unresolved.

(8) The potential applicant must describe all disagreements with a resource agency or Indian tribe on technical or environmental protection, mitigation, or enhancement measures in its application, including an explanation of the basis for the applicant's disagreement with the resource agency or Indian tribe, and must include in its application any document developed pursuant to paragraph (c)(7) of this section.

(9) * * *

(i) It has complied with paragraph (c)(4) of this section and no resource agency or Indian tribe has responded with substantive disagreements by the deadline specified in paragraph (c)(5) of this section; or

(ii) It has complied with paragraph (c)(6) of this section if any resource agency or Indian tribe has responded with substantive disagreements.

(10) * * *

(i) Ninety days after the submittal of information pursuant to paragraph (c)(4) of this section in cases where no resource agency or Indian tribe has responded with substantive disagreements; or

(ii) At the conclusion of the last joint meeting held pursuant to paragraph (c)(6) of this section in cases where a resource agency or Indian tribe has responded with substantive disagreements.

(d) * * *

(2) When an applicant files such application documents with the Commission, or promptly after receipt in the case of documents described in paragraph (d)(2)(iii) of this section, it must serve on every resource agency or Indian tribe consulted, and, in the case of applications for surrender or nonpower license, any state, municipal, interstate, or Federal agency which is authorized to assume regulatory supervision over the land, waterways, and facilities covered by the application for surrender or nonpower license, a copy of:

* * * * *

(e) *Resource agency or Indian tribe waiver of compliance with consultation requirement.* (1) If a resource agency or Indian tribe waives in writing compliance with any requirement of this section, a potential applicant does not have to comply with that requirement as to that agency or Indian tribe.

(2) If a resource agency or Indian tribe fails to timely comply with a provision regarding a requirement of this section, a potential applicant may proceed to the next sequential requirement of this section without waiting for the resource agency or Indian tribe to comply.

(3) The failure of a resource agency or Indian tribe to timely comply with a provision regarding a requirement of this section does not preclude its participation in subsequent stages of the consultation process.

(f) *Application requirements documenting consultation and any disagreements with resource agencies or Indian tribes.*

* * * * *

(1) Any resource agency's or Indian tribe's letters containing comments, recommendations, and proposed terms and conditions;

* * * * *

(3) Notice of any remaining disagreement with a resource agency or Indian tribe on:

* * * * *

(ii) Information on any environmental protection, mitigation, or enhancement measure, including the basis for the applicant's disagreement with the resource agency or Indian tribe.

* * * * *

(5) Evidence of all attempts to consult with a resource agency or Indian tribe, copies of related documents showing the attempts, and documents showing the conclusion of the second stage of consultation;

(6) An explanation of how and why the project would, would not, or should not, comply with any relevant comprehensive plan as defined in § 2.19 of this chapter and a description of any relevant resource agency or Indian tribe determination regarding the consistency of the project with any such comprehensive plan;

* * * * *

(g) *Requests for privileged treatment of pre-filing submission.* If a potential applicant requests privileged treatment of any information submitted to the Commission during pre-filing consultation (except for the information specified in paragraph (b)(1) of this section), the Commission will treat the request in accordance with the provisions in § 388.112 of this chapter until the date the application is filed with the Commission.

(h) *Other meetings.* Prior to holding a meeting with a resource agency or Indian tribe, other than a joint meeting pursuant to paragraph (b)(2)(i) or (c)(6)(i) of this section, a potential applicant must provide the Commission and each resource agency or Indian tribe (with an area of interest, expertise, or responsibility similar or related to that of the resource agency or Indian tribe with which the potential applicant is to meet) with written notice of the time and place of each meeting and a

written agenda of the issues to be discussed at the meeting at least 15 days in advance.

* * * * *

(j) *Transition provisions.*

* * * * *

(4) * * *

(iii) * * *

(D) A potential applicant must upon request promptly provide to the Commission and any resource agency or Indian tribe copies of the audio recordings or written transcripts of the sessions of the public meeting.

* * * * *

(6) A potential applicant that has initiated consultation with resource agencies in accord with this section must initiate consultation with Indian tribes meeting the criteria set forth in § 16.2(f) not later than February 9, 1990.

4. In § 16.18, a new paragraph (d) is added to read as follows:

§ 16.18 Annual licenses for projects subject to sections 14 and 15 of the Federal Power Act.

* * * * *

(d) In issuing an annual license, the Commission may incorporate additional or revised interim conditions if necessary and practical to limit adverse impacts on the environment.

Trabandt, Commissioner, Dissenting in Part.

The majority has affirmed its earlier determination that section 18 of the Federal Power Act, which confers authority on the Departments of Interior and Commerce to prescribe fishways, is applicable to relicensing. I disagreed with the majority's determination at the time of issuance of the Final Rule and still believe that section 18 is *not* applicable with respect to the relicensing of existing projects. My belief is based on several legal and policy grounds.

Legal

First, I place considerable significance from a statutory construction perspective on the decision of Congress to enact the section 15 process in ECPA. I find it inexplicable that Congress would have enacted section 15 which includes the elaborate section 10(j) requirements with regard to the subject of fish and wildlife recommendations, if there was any conceivable argument that section should apply to relicensing. In the alternative, if section 18 was deemed to apply to relicensing, Congress surely would have noted that and rationalized its application as part of section 15.

Second, the decision unnecessarily jeopardizes two important Congressional interests in Commission relicense proceedings: to protect the interests of the investors and the project's customers. I discussed this point in detail in my dissenting opinion in *City of Pasadena Water and Power Department*, 46 FERC ¶61,004 (1989).

Third, there is no compelling evidence in the statute itself or its legislative history that suggests section 18 authority applies to relicensing proceedings. Indeed, the Edison Electric Institute (EEI) in its rehearing petition on this issue, supplies citations to legislative history that confirms my belief that the authority of the Secretary under section 18 could only be exercised prior to the initial licensing of an unconstructed project. In response to a question seeking an answer on the perceived federal-state conflict embodied in section 18, one of the bill's managers, Mr. Esch, offered a statement that provides ample support for this proposition:

Mr. Esch. Now, if we gave that power to the Secretary of Commerce—and there is no other Federal official to whom it could be given—*to be exercised at the time the dam is constructed*, when it could be installed more cheaply than it could be at any time thereafter, we would avoid the delay that would necessarily result if we left it for the State officials to authorize, and in many cases it would not be authorized by the State officials, and in some States they have no laws covering the subject matter. I do not think that if the Secretary of commerce exercised his power he would do it in contravention of or without some conference with the State authorities, and I think all could be amicably arranged. I do not anticipate any of the dangers or difficulties such as the gentleman from Massachusetts seems to suggest by his interrogatory.

Mr. Walsh. We may not always have an amiable and efficient Secretary of Commerce. Suppose we had one that gets into conflicts with the State authorities over this fishway business? Which regulation is going to predominate? The Federal one prescribed by the Secretary of Commerce or the one prescribed by the State authority?

Mr. Esch. I feel where the Government gives to a licensee the right to construct a dam over a navigable water, it can affix such conditions as it seem best, and among those conditions would be one to give the Secretary of commerce *the right to say that a fishway should be put in a dam at the time of construction*. So on that theory I believe we could justify the provisions of the bill, the putting in of the fishway being one of the conditions which the Government exacts for the issuance of the grant.

Cong. Rec. 10036 (House) September 5, 1918; emphasis added. This legislative history clearly indicates that Congress intended the Secretary to have an opportunity to prescribe fishways "at the time of construction" of a project.

Policy

The following policy considerations support what I believe to be the more sensible legal interpretation of section 18 with respect to its applicability to relicensing proceedings.

First, the design and installation of fishways at hydroelectric projects is, generally, very costly in terms of construction, operation and maintenance costs, and potential negative impact on project operations and power generation.

Second, a potential licensee should be given the opportunity to include in any economic feasibility assessment to a reasonable estimate of expected future expenses. It is unreasonable to issue a license to an applicant and not at least put the licensee on notice that signficant expenses are yet to come. A recent Commission case serves to highlight the potential financial danger associated with planning development of a hydropower project, even when the project wil be located at an existing dam site.

In *Eugene Water and Electric Board*, 49 FERC ¶ 61,211 (1989), the Commission issued an original license to an applicant for a proposed project that will use surplus water or water power from a government dam, owned and operated by the U.S. Army Corps of Engineers. However, there currently is some doubt as to whether the licensee will develop the project because of conditions in the license relating to construction of fishway facilities prescribed by the National Marine and Fisheries Service (NMFS), the agency within Commerce responsible for recommending construction of fishway facilities pursuant to section 18 of the EPA. In accordance with the NMFS' recommendation, Commerce submitted a fishway prescription pursuant to section 18 that contained criteria for a specific fish screen much more comprehensive than ever before submitted by Commerce under section 18. The manner in which this fish screen is to be constructed was not previously addressed in the lengthy consultation process prior to licensing this project, nor was it addressed at the section 10(j) meeting held pursuant to the recent amendments of the Electric Consumer Protection Act of 1986 (ECPA). Parenthetically, ECPA included this procedure for the purpose of resolving fish and wildlife controversies that arise during consultation with the agencies.

The new information on the specific fishway structure required by NMFS in *Eugene*, indicated that the construction of the fishway facilities would prove to be very costly. Commerce provided no substantial evidence that the facilities prescribed could be constructed at the site of the project, would be effective, or were needed; nor did Commerce provide any drawings or cost estimates. Indeed, in my concurring opinion to *Eugene*, I pointed out how NMFS recommending construction of fishway facilities pursuant to section 18, was apparently using section 18 authority to kill the project. In essence, NMFS was using section 18 authority to veto a project that the Commission unanimously agreed is a responsible effort to develop needed electric generation in the northwestern region of the United States. The tragic irony is that they may yet be successful.

Nevertheless, because section 18 is mandatory, the Commission felt compelled to require the licensee to construct, operate, and maintain the fishways that Commerce prescribed. However, the Commission reserved the right to modify, if necessary to preserve the economics of the project, the design of the fishway facilities. Even with this reservation however, the licensee may still decide that the project, made marginally economic by the construction of the facilities, is not worth developing. At least in this original license instance, the licensee can

make that business decision before having expended large sums of money for the development of the project. In a relicensing proceeding, that option will not exist.

Third, with respect to relicense applications that propose to do nothing more than continue the existing operation without any modifications, it appears to me to be grossly inappropriate to permit Interior or Commerce to require the design, construction, operation, and maintenance of costly fish passage facilities without requiring Interior or Commerce to meet at least some threshold standard of extraordinary circumstances. I am particularly concerned that current Federal budgetary constraints that limit funding for fishery facilities will precipitate the use of the section 18 authority to require such facilities as a condition of a new license for existing hydroelectric projects, in the absence of such a standard. In my judgement, this Commission has the responsibility for ensuring a proper balance of the need for continued economic operation of existing hydroelectric projects that are subject to relicensing and any asserted need for new fishway facilities at an operating project.

Section 18 Implementation

Apart from the question of whether section 18 should apply in the relicensing process, which the majority here has decided in the affirmative, there is the important implementation question of how section 18 will be applied in the context of this Final Rule. In that regard, I would like to highlight and reiterate the most recent statement of the Commission on that general question as it was addressed in the aforementioned *Eugene* case. To that end, I will quote from my separate opinion in that case of the section 18 issue.

The Commission unanimously agreed that the Blue River Dam project is a responsible effort to develop needed electric generation in the Northwestern region of the United States and, in so doing, repelled an aggressive attempt by the National Marine and Fisheries Service (NMFS) to impose unjustifiable costs for *inter alia*, water temperature controls that would have rendered the project uneconomical. The Commission also rejected concerted efforts by NMFS to abuse its procedural and substantive prerogatives under section 10 and section 18 of the Federal Power Act to cripple or kill this project, as described at length at pages 3 to 13 of the slip opinion.

As this case demonstrates, the section 10(j) and section 18 statutory scheme has been used by NMFS to play a high takes poker game of sorts. By its actions here, NMFS has laid its cards on the table, so to speak, in that game. It has finally demonstrated beyond any reasonable doubt that it believes it holds a "wild card" to dictate the results of the game, including a high handed effort here to cripple or kill a project that rates as high for nondevelopment resources as it does for hydroelectric power potential. In fact, as the Commission states in footnote 15, at page 11, for NMFS to "assert a section 10(j) inconsistency at the last moment is to try to veto the project based on procedural gamesmanship." As a result, it is necessary and appropriate, in my judgment, to write separately for the purpose of calling a spade a spade, as it were.

In this regard, I think it is worth noting the section 18 issued contained in this proceeding. Section 18, cannot and must not be read in complete isolation, as a free standing statutory provision, as if the rest of the Federal Power Act, particularly as it was amended by the Electric Consumer Protection Act (ECPA), does not exist. It would be completely inconsistent with the thrust of the Federal Power Act, particularly after ECPA, to argue that NMFS under section 18 has carte blanche to do indirectly through section 18 that which it cannot do directly through section 10(j). I do not believe that Congress, at any point before or after ECPA, ever intended that the scope of section 18 was such that NMFS could impose requirements under section 18 that would alter materially the project design and operation, over which the Commission otherwise has exclusive jurisdiction, for any and every project on any waterway in the country. That would include any future effort by NMFS in this case to use the prescription under section 18 to kill this hydroelectric development at an existing impoundment which clearly will enhance nondevelopment resources, in addition to providing needed electric power in a region of the nation which is experiencing a rapidly diminishing supply of electricity. That also would include any effort by NMFS, in the context of prescribing a fishway as an integral part of the broader project, to become an independent authority able to dictate the economic viability of the project or to exercise wholly separate and independent control over design, construction, and operation of the project.

Accordingly, as the Commission has made clear previously in *Lynchburg Hydro Associates*, 39 FERC ¶ 61,079 (1987) (*Lynchburg*) the Commission by necessity must determine independently whether the fishway prescribed by NMFS exceeds the narrow scope of section 18 and would require any significant or material modification to the project design, construction or operation under the license as otherwise developed pursuant to the FPA, as amended by ECPA. That independent responsibility clearly vested in the Commission includes the authority to determine whether the prescribed fishway would, as prescribed by NMFS, be so unreasonably costly as to render the project uneconomic. A "Cadillac" fishway design prescribed by NMFS, which would render the project uneconomic, when a "Chevrolet" alternative design would be adequate, would be no more reasonable than a prescribed design which would materially alter the general design, construction, or operation of the licensed project. As surely as day must follow night, if a prescribed fishway design would kill a project through excessive costs not reasonably necessary, that prescribed design would constitute a material alteration to the construction and operation of the licensed project. This is so, because there would be no construction or operation in the end, and simple logic dictates that such a result certainly is not immaterial nor inconsequential. Thus, it is quite clear that the scope of section 18 cannot include discretion on the part of NMFS to prescribe a design with excessive and unreasonable costs that threaten project viability.

The Commission in an analogous way in this case has recognized that the adoption of the NMFS proposal for installation by the Eugene Water and Electric Board of water temperature control facilities is unjustified here. The Commission concludes, slip opinion at 10, that "installation of appropriate water control facilities to mitigate water temperature impacts is properly the responsibility of the Corps [of Engineers] rather than of the applicant [and] [t]his is especially true in this case, where to require the licensee to install temperature control facilities would remove the net benefits of the project." Thus, the Commission already has rejected one NMFS proposal that beyond any reasonable doubt would render the project a dead letter. Similarly, as to the NMFS fishway facility design criteria, I am satisfied that the Commission has an equally affirmative obligation to ensure that those criteria do not affect negatively the net benefits of the project in terms of its cost or design, construction and operation. Thus, the NMFS design criteria can provide general engineering and technical guidance but only to the extent that application of the guidance would not render the project uneconomic, particularly where a less costly alternative would be adequate.

Similarly, and just as obvious, NMFS has no authority to prescribe rigid and excessive design criteria for fishways which are incompatible with the general project design and subsequent construction and operation already approved in this license. It must be remembered, for example, that the Commission must have the ultimate responsibility for dam safety engineering considerations, as well as impacts on other affected resources, such as flood control, irrigation and recreation, in addition to the fishery resources for which the fishway design criteria ostensibly would be prescribed. Thus, the NMFS prescribed fishway design cannot be allowed to negatively impact on dam safety, navigation, flood control, irrigation, water supply, or recreation.

The Commission on page 12 of the slip opinion expressly cites two cases, *Lynchburg* and *Clearwater Hydro Limited Partnership*, 41 FERC ¶ 61,330 (1987) (*Clearwater*), where it has discussed how it will address the scope of section 18. Indeed, both the *Lynchburg* and *Clearwater* cases cited on that page clearly stand for the principle that the authority to "prescribe" fishways does not include broad power to impose mandatory conditions of license unrelated to fishways and cannot be used as a vehicle for requiring substantial revisions to the project's design or operation, since such matters are entrusted to the Commission's ultimate judgment. That principle is crucial here, because, as discussed at page 12, NMFS has not provided substantial evidence that the Green Peter fish facilities could even be constructed at the Blue River Reservoir, would be effective, or for that matter even are needed; nor has NMFS provided any drawings or cost estimates. In that regard, the instant order (1) affirms that crucial principle, (2) states, at

page 12 of the slip opinion, that the Commission retains final authority over project structures, and (3) reserves the right in Article 411 of the license for the Commission to require modifications to the functional design drawings, if such modification proves necessary as a consequence of NMFS' design criteria as provided in its October 6, 1989 letter cited in the Article. As a result, I support this order with the clear understanding and expectation that the principle established in *Lynchburg* and *Clearwater* will be applied to the NMFS fishway design criteria and the resulting functional design drawings of the licensee.

In conclusion, for this Commissioner, the NMFS cards on the table in this case are as clear and unambiguous as clubs, diamonds, hearts, and spades and, when it is all said and done in this case, the Commission must not accede to the NMFS efforts to cripple or kill this project. Consequently, I urge my colleagues and the Commission staff to remain diligent in our efforts to preserve the significant net benefits of the project in the face of any further attack on the project by NMFS under the rubric of section 18. I also want to assure more generally all those still committed to a hydroelectric option for this nation that I am confident of continued vigilance in these efforts in future cases.

I would make a few further observations about the application of section 18 in the relicensing process established by this Final Rule. First, Interior or Commerce under § 18 authority must not be allowed to delay the critical relicensing schedule established by the Final Rule to meet the statutory deadlines enacted by Congress in section 15 of the ECPA. That relicensing schedule has carefully balanced many competing factors to ensure that the licensee, other applicants, all state and Federal agencies, all interested parties and the public at large have a full opportunity to participate in the relicensing process in a timely way that will support decisions by the Commission in conformance with the deadlines and other applicable provisions of ECPA.

Second, any Interior or Commerce requirements for fishways must be provided to the Commission in a timely fashion in order that those requirements can be incorporated into the relicensing process and considered appropriately by the Commission, the licensee, other applicants, other agencies and all interested parties. If Interior or Commerce were to fail to do that, it would be well nigh impossible for the Commission to conduct the comparative analysis and evaluation of competing applications mandated by ECPA, because a critical factor with regard to fishery resources, project costs, minimum flows and other aspects of the project simply could not be calculated, analyzed, or evaluated on either a single application or comparative basis, as ECPA requires.

Third, the existing hydroelectric projects subject to relicensing are, after all, *operating* projects providing an important, and in some cases, critical source of electrical power for their regional electric grids. Therefore, the admonitions of the Commission in the *Eugene* case as to the limitations on the scope of the authority under section 18 in original licensing for new projects must, of necessity, be read to encompass this very significant additional dimension in the context of relicensing existing projects.

Interior or Commerce should not and, indeed, must not be allowed to impose new fishway construction and operating requirements which will materially interrupt the operation of the existing projects, disrupt the scheduling of electric power generation, or degrade the rated amount of electric power generation capacity. Such material interruption, disruption or degradation would affect negatively the critical availability of this important existing source of electric power for regional electric consumers at a time in the 1990's of growing demand and heightened concern about the availability of adequate supply in the form of generation capacity, particularly the clean, domestic, reliable, renewable and cost-effective electric generation from these existing hydroelectric projects which in the aggregate constitute a significant percentage of the nation's current supply. That concern would be particularly important in the Pacific Northwest region of the country where existing hydroelectric projects subject to relicensing constitute a major source of regional electric power.

Fourth, pursuant to ECPA, the Commission must carefully consider all non-power resources relevant to a particular existing project in the relicensing process, including but not limited to the fishery resource, on an "equal consideration" basis, although not necessarily on an "equal treatment" basis. Therefore, the provision for new fishway facilities under section 18 must be encompassed by the Commission within its overall assessment of all power and non-power resources as part of its "equal consideration" responsibilities. Consequently, Interior or Commerce should avoid requiring new fishway facilities which are not in harmony with the overall balancing of competing power and non-power resource interests which the Commission must make pursuant to ECPA. In the end, while there may be competing applications and a variety of fishery resource recommendations from various agencies and parties, there is only one existing and currently operating project for which all requirements must be harmonized for safety, technical and operational purposes, as well as to provide the lowest reasonable cost and most reliable operation of the electricity generation for regional electric consumers. That can only occur in the form of such a harmonized technical and operational approach of all applicable requirements for new fishway facilities or modifications of existing facilities.

Fifth, any Interior or Commerce requirement for fishways should be formulated in the context of current operations of an existing project, rather than some form of past historical postulation of the pre-existing fishery resource decades ago, prior to the original construction and operation of the existing project. In the Final Rule, the Commission has rejected recommendations calling for required so-called "base-line" data of the pre-existing fishery resource before construction of the project. For the same reasons, Commerce or Interior under section 18 must not require fishways that do not reflect current fishery resources and related efforts today for protection, mitigation and enhancement of those current resources.

I hope these observations are helpful for the commission staff, Commerce and Interior, licensees, other applicants, state and Federal resource agencies and other interested parties in their efforts to integrate the section 18 implementation responsibly into the relicensing process established in this Final Rule.

Conclusion

I dissent on the majority's decision in the Final Rule to require the application of section 18 to the relicensing of existing projects for the aforementioned legal and policy reasons. In the end, I would hope that decision will be reversed and section 18 thereafter would only be applied to original licensing. In the interim, however, the practical reality is that section 18 must apply to relicensing under the Final Rule. Consequently, I believe that the Commission, Interior and Commerce must proceed in good faith to implement that new requirement in a manner which is wholly consistent with the letter and spirit of ECPA, which is the most recent direct expression of Congressional intent for the relicensing process. I look forward to that effort in the months ahead under the Final Rule.

For these reasons, I dissent.

Charles A. Trabandt,

Commissioner.

[FR Doc. 89-30364 Filed 12-29-89; 8:45 am]

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18 CFR Part 270

Establishment of Deadlines for First Sellers To Make and Report Refunds; Order on Rehearing

[Docket No. RM89-6-001; Order No. 515-A]

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

Issued December 15, 1989.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule, order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) issued a final rule in Order No. 515 to revise its regulations for carrying out wellhead pricing refund requirements under the Natural Gas Policy Act of 1978. The final rule revised §§ 270.101 and 271.805 of the Commission's regulations to establish specific time limits by which first sellers must make refunds of overcollections or unauthorized collections and file refund reports with the Commission.

This order on rehearing denies in part and grants in part renearing of Order No. 515. This order also amends the

refund regulations to provide first sellers an opportunity to resolve disputes arising from refund obligations before purchasers use the unilateral billing adjustment to collect the refunds.

EFFECTIVE DATE: This rule is effective December 15, 1989.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–8530.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357–8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order on rehearing will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

I. Introduction

The Federal Energy Regulatory Commission (Commission) grants in part and denies in part rehearing of Order No. 515, a final rule that revised §§ 270.101 and 271.805 of the Commission's regulations to establish specific time limits by which first sellers must make refunds of overcollections or unauthorized collections and file refund reports.[1]

II. Background

On August 3, 1989, the Commission issued Order No. 515, revising §§ 270.101 and 271.805 of the Commission's regulations to establish specific time limits by which first sellers must make refunds of overcollections or unauthorized collections and file refund reports with the Commission. The final rule was issued in response to an audit of the Commission's wellhead pricing refund program conducted at the Commission's request by the Office of the Inspector General, United States Department of Energy.[2] Prior to Order No. 515, the Commission's refund regulations required first sellers of natural gas to make certain refunds "promptly".[3]

In Order No. 515, the Commission revised § 270.101(e) to require a first seller to pay refunds, including interest, within 120 days after being notified of a refund obligation by Commission staff or a purchaser, unless the refunds are recovered by the purchaser through a billing adjustment. If the first seller fails to make a refund within the 120-day period, the purchaser may use a billing adjustment to recover the refund without agreement by the first seller. Before making a billing adjustment, however, the purchaser must provide the first seller written notice of the amount of the refund to be recovered and the time period during which the billing adjustment will be completed. The time period for the billing adjustment can be a reasonable period of time not to exceed one year from the date a first seller is notified of a refund obligation. The first seller also must file a refund report within 150 days after being notified that a refund is due. The first seller is not required to file a refund report when the refund is recovered by the purchaser through a billing adjustment.

The Commission also revised § 271.805(f) of the regulations to specifically require refunds and reports after disqualification of a stripper well.[4] A provision was added to § 271.805(f) to require a well operator to comply with the new refund and report provisions added in § 270.101(e), when a petition for a jurisdictional agency stripper well determination or a motion contesting disqualification of a stripper well is denied or withdrawn. New § 271.805(g) was added to the Commission's regulations to require in the case of refunds due to disqualification of a stripper well, that a first seller refund all excess amounts collected, with interest, within 180 days after well disqualification,[5] unless the first seller has filed a petition for a jurisdictional agency stripper well determination within 150 days after well disqualification or unless the refund has been recovered through a billing adjustment in accordance with § 270.101(e). Order No. 515 also requires a first seller to file either a refund report, a statement that no refunds are due, or an affidavit that the first seller did not collect more than the otherwise applicable maximum lawful price.

The first seller is not required to make a refund report if the refund is recovered by the purchaser through a billing adjustment.

On September 5, 1989, Shell Oil Company and Texaco Inc. filed timely requests for rehearing.[6] For the reasons discussed below, the Commission is granting rehearing in part and otherwise denying rehearing of Order No. 515.

III. Discussion

Commenters on rehearing contend that the final rule has not adequately defined or restricted who on the Commission's staff or the purchaser's staff may issue a notice of a refund obligation. They also claim that the refund provisions should require that a refund notice contain data supporting the claim for refund and should provide guidelines with respect to the form or content of a refund notice. We conclude otherwise.

It is not necessary to amend the refund regulations to identify specifically who on the Commission's staff may issue a notice of a refund obligation, or to specify what will constitute adequate notice, given the procedures that have been used for several years to notify first sellers of refund obligations. Under these procedures, notice is provided in a letter or order by the Director of the Office of Pipeline and Producer Regulation, or his designee, when refunds are found to be due in certificate and rate filings, or when refunds are found to be due as a result of Commission staff review of the first seller's or the purchaser's books.[7] In these cases, specific information about the wells involved, the data reviewed, and the basis for the conclusion that overcollections or unauthorized collections have occurred,

[1] 54 FR 32,805 (Aug. 10, 1989); III FERC Stats. & Regs. 30,859 (Aug. 3, 1989).

[2] U.S. Department of Enery, Office of the Inspector General, the Federal Energy Regulatory Commission's Wellhead Pricing Refund Program, No. 0259 (Sept. 28, 1982).

[3] *See* 18 CFR 270.101(e) (1988).

[4] Under § 271.805(f), an operator who files either a petition for a jurisdictional agency stripper well determination or a motion contesting the disqualification of a stripper well may collect, subject to refund, the stripper well maximum lawful price.

[5] *See* 18 CFR 271.805 (a) and (b) (1989).

[6] Texaco's request for rehearing adopted Shell Oil Company's request for rehearing *mutatis mutandis*. On October 5, 1989, the Commission granted rehearing solely for the purpose of further consideration.

[7] *See* 18 CFR 375.307 (1989).

is provided. Sellers are directed either to make the refunds or to explain why they do not believe the refunds are due. It also is unnecessary to provide in our regulations who in a purchaser's organization should be able to issue a refund notice, or what information that notice must contain, since it is likely that purchasers also have internal procedures to ensure that only authorized personnel are able to notify a first seller of refund obligations and that the notice provides adequate information for the first seller to verify or challenge the refunds.[8]

Commenters on rehearing also contend that permitting a mere notice that a refund is due to trigger an obligation to make a refund deprives a first seller of the ability to assess the validity of the claim for a refund. They request that the Commission provide protest procedures or some other alternative procedures to protect the first seller's right to contest notice of a refund obligation. We conclude that this is unnecessary.

Procedures are already in place in the Commission's regulations to provide first sellers an opportunity to appeal the Office Director's action,[9] so that the Commission itself will review a disputed action and issue an order on the merits. These orders, in turn, are subject to court appeal after rehearing.[10] In addition, there are procedures by which a first seller may file a complaint or protest with the Commission and thereby challenge a purchaser's notice of billing adjustment.[11]

In the majority of refund situations, the 120 days before refunds are due will provide adequate time for the first seller to verify the refunds or to resolve disputes. Nevertheless, we are amending our refund regulations to provide that if a first seller appeals the Office Director's action, or files a complaint or protest, the purchaser may not use the billing adjustment mechanism to collect refunds until the Commission issues a final order on the appeal, complaint, or protest.[12] These changes, together with existing procedures, should ensure that there will be no unilateral billing adjustments while the first seller is disputing the existence of a refund obligation. We are taking this action as a matter of fairness to those entities that may have reasonable disputes about a refund amount claimed to be due and that otherwise could find themselves subject to paying a refund claim before having a chance to question it.

[8] The revision to our regulations made in this order, discussed *infra*, should provide adequate protection to those who dispute claimed refund amounts.

[9] *See* 18 CFR 375.301(a) (1989).

[10] *See* 15 U.S.C. 717r (1988).

[11] *See* 18 CFR 385.206 (1989).

[12] *See* new 18 CFR 270.101(e)(2)(ii).

Effective Date

In order that the limitation we have placed on the use of billing adjustments may be in effect by the time (January 17, 1990) that billing adjustments might otherwise be used, we find good cause to make the changes effective upon date of issuance.

List of Subjects in Part 270

Natural gas, Price controls, Reporting and recordkeeping requirements.

In response to the foregoing, the Commission amends part 270, chapter I, title 18 of the Code of Federal Regulations as set forth below.

By the Commission.

Lois D. Cashell,

Secretary.

PART 270—RULES GENERALLY APPLICABLE TO REGULATED SALES OF NATURAL GAS

1. The authority citation for part 270 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1988); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1988).

2. In § 270.101, paragraph (e)(2) is redesignated paragraph (e)(2)(i) and new paragraph (e)(2)(ii) is added to read as follows:

§ 270.101 Application of ceiling prices to first sales of natural gas.

* * * * *

(e) *General refund obligation and filing requirements for first sellers.* * * *

(2) * * *

(ii) If a first seller appeals an action by the Director of the Office of Pipeline and Producer Regulation notifying the first seller of a refund due, or files a complaint or protest in response to a purchaser's notice of billing adjustment, a purchaser may not use the billing adjustment mechanism to collect refunds until issuance of a final Commission order on the appeal, complaint or protest.

* * * * *

[FR Doc. 89-30291 Filed 12-29-89; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Maduramicin Ammonium With Chlortetracycline

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) published a document amending the animal drug regulations to reflect approval of a new animal drug application (NADA 140–837) filed by American Cyanamid Co. in the **Federal Register** of June 26, 1989 (54 FR 26732). The application provided for use of maduramicin ammonium and chlortetracycline granular Type A medicated articles to make combination drug Type B and Type C medicated broiler feeds. The document failed to state that both maduramicin and chlortetracycline are limited to that provided by American Cyanamid Co. This document provides for that limitation.

EFFECTIVE DATE: January 2, 1990.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

SUPPLEMENTARY INFORMATION:

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.340 is amended in paragraph (c)(2)(ii) by adding a sentence at the end of the paragraph to read as follows:

§ 558.340 Maduramicin ammonium.

* * * * *

(c) * * *

(2) * * *

(ii) * * * Chlortetracycline calcium complex granular as provided by 010042.

* * * * *

Dated: December 22, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-30338 Filed 12-29-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 40a

Defense Contracting; Reporting Procedures on Defense Related Employment

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This rule is the fiscal year 1989 revision of the section listing DoD contractors receiving contract awards of $10 million or more. This part is published to comply with the provisions of section 1, Public Law 97-295, October 12, 1982; 10 U.S.C. 2397.

EFFECTIVE DATE: September 30, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. J. R. Sungenis, Director for Information Operations and Reports, Washington Headquarters Services, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA, 22202-4302. Telephone (202) 746-0334.

List of Subjects in 32 CFR Part 40a

Armed Forces, Conflict of interests, Government employees, Government procurement, Reporting and recordkeeping requirements.

Accordingly, 32 CFR part 40a is revised to read as follows:

PART 40a—DEFENSE CONTRACTING: REPORTING PROCEDURES ON DEFENSE RELATED EMPLOYMENT

Authority: Sec. 1, Pub. L. 97-295, October 12, 1982; 10 U.S.C. 2397.

40a.1 Department of Defense contractors receiving awards of $10 million or more.

Fiscal Year 1989

A&S Tribal Industries
AAI Corp.
AAR Brooks & Perkins Corp.
ACC Construction Co., Inc.
ACS Construction Co. of Mississippi
AEL Defense Corp.
AEL Industries, Inc.
AGFA Compugraphic Corp.
AIA Construzioni, SPA
AM General Corp.
AT&T Information Systems
AT&T Technologies, Inc.
Abbott Laboratories
Abbott Products, Inc.
Abex Corp.
Accudyne Corp.
Actus Corp. & Sundt Corp. JV
Acurex Corp.
Advanced Decision Systems
Advanced Marine Enterprises
Advanced Technology, Inc.
Aegis Nordhaaus
Aepco, Inc.
Aero Systems Engineering, Inc.
Aerojet Electrosystems Co.
Aerojet General Corp.
Aerospace Corp., The
Airspace Technology Corp.
Aksarben Foods
Alabama Power Co.
Aleman Food Service, Inc.
Aleutian Constructors
All Bann Enterprises, Inc.
Allied Petroleum, Inc.
Allied Signal Aerospace Co.
Allied Signal, Inc.
Alpha Industries, Inc.
Altama Delta Corp.
Alvarado Construction, Inc.
Amerada Hess Corp.
American Airlines, Inc.
American Apparel, Inc.
American Cyanimid Co., Inc.
American Development Corp.
American Education Complex College District
American Engineering Corp.
American Management Systems, Inc.
American President Lines, Ltd.
American Satellite Co.
American Systems Corp.
American Technologies, Inc.
American Telephone & Telegraph Co.
American Transport Lines, Ltd.
Ametek, Inc.
Amoco Corp.
Ampex Corp.
Amron Corp.
Amstar Corp.
Anadac, Inc.
Analysis & Technology, Inc.
Analytic Sciences Corp.
Analytic Services, Inc.
Analytical Systems Engineering Corp.
Analytics, Inc.
Andersen, Roy Corp.
Apex Oil Co.
Applied Companies, Inc.
Aral AG
Arcata Associates, Inc.
Archetype Services a Joint Venture
Argosystems, Inc.
Arinc Research Corp.
Arkla, Inc.
Armored Vehicle Technologies Assoc.
Armstrong Rubber Co., The
Assurance Technology Corp.
Astronautics Corp. of America
Atlantic Marine, Inc.
Atlantic Research Corp.
Atlantic Richfield Co.
Atlas Construction Co., The
Atlas Processing Co.
Austin Co., The
Automation Research Systems, Ltd.
Avco Corp.
Avco Research Laboratory, Inc.
Aviall of Texas, Inc.
Avondale Gulfport Marine
Avondale Industries, Inc.
Aydin Corp.
BBDO Worldwide, Inc.
BBN Communications Corp.
BDM International, Inc.
BDM Management Services Co.
BDM Services Co.
BEI Electronics, Inc.
Babcock & Wilcox Co.
Bahrain National Oil Co.
Baldy Brothers Constructors
Balimoy Mfg. Co. of Venice
Ball Corp.
Barrett Refining Corp.
Basic American Foods
Baszile Metal Service
Bath Iron Works Corp.
Battelle Memorial Institute
Bay Tankers, Inc.
Beatrice Companies, Inc.
Bechtel Construction Corp.
Bechtel Group, Inc.
Bechtel National, Inc.
Beech Aerospace Services, Inc.
Beech Aircraft Corp.
Bell Helicopter Textron & Boeing Co., JV
Bell Helicopter Textron, Inc.
Belleville Shoe Mfg. Co.
Benavidez Esky Construction Co.
Beneco Enterprises, Inc.
Beretta USA Corp.
Berry Petroleum Co.
Bertucci, Anthony J. Construction Co.
Betac Corp.
Bhandari Constructors & Co.
Big D Construction Corp.
Bilfinger & Berger Bauaktienge
Black & Veatch
Black Construction Corp.
Blacker, Stanley, Inc.
Blount Brothers Corp.
Blue Cross & Blue Shield of South Carolina
Blue Cross & Blue Shield of Washington & Alaska
Bodell Construction Co.
Boeing Co. & Sikorsky Aircraft JV
Boeing Co., The
Bolt Beranek & Newman, Inc.
Booz Allen & Hamilton, Inc.
Bowman, John, Inc.
Bozell, Jacobs, Kenyon, & Eckhardt
Braswell Shipyards, Inc.
Bristol Myers Co.
British Aerospace PLC
Browning Construction Co.
Brunswick Corp.
Buckner & Moore, Inc.
Bulova Systems & Instruments Corp.
Bundesamt Fuer Wehrtechnik
Burlington Industries, Inc.
Burnside Ott Aviation Training Center
C&S Transit Co.
C3, Inc.
C Construction Co., Inc.
CACI, Inc.
CACI International, Inc.
CAE Industries, Ltd.
CAE Link Corp.
CAS, Inc.
CBI Na Con, Inc.
CDI Marine Co.
CE Operations & Maintenance Services, Inc.
CFM International, Inc.
CFS Aircargo, Inc.
CJM Construction Co. & Unit Co. JV

CMA, Inc.
COPENA
CQ Construction Corp.
CRS Sirrine, Inc.
CRS Sirrine Metcalf & Eddy JV
CTA, Inc.
Caddell Construction Co., Inc.
Cadillac Gage Textron, Inc.
Calcasieu Refining Co.
California Pacific Associates
Calspan Corp.
Caltex Oil Products Co.
Camel Mfg. Co.
Campbell Soup Co.
Cantu Services, Inc.
Carlson Florida Construction Co.
Carnegie Mellon University
Carolina Power & Light Co.
Carothers Construction, Inc.
Cartwright Electronics, Inc.
Casde Corp.
Case, J.I. Co.
Caterpillar, Inc.
Centel Information Systems
Centex Construction Co.
Century Technologies, Inc.
Cessna Aircraft Co., Inc.
Chamberlain Mfg. Corp.
Chemical Waste Management
Chesapeake & Potomac Telephone Co. of MD
Chevron USA, Inc.
Chromalloy Gas Turbine, Inc.
Cincinnati Electronics Corp.
Cincinnati Gear Co., The
Cinpac, Inc.
Citgo Petroleum Corp.
Clement Bros. & J. E. Stark JV
Coastal Refining & Marketing
Cobro Corp.
Coleman Research Corp.
Collins International Service Co.
Colonnas Shipyard
Colsa, Inc.
Colt Industries, Inc.
Columbia Research Corp.
Comarco, Inc.
Comcon, Inc.
Communications International
Compania Espanola De Petroleos
Comprehensive Technologies International
Comptek Research, Inc.
Computer Dynamics, Inc.
Computer Sciences Corp.
Computer Software Analysts, Inc.
Comstock Communications, Inc.
Conax Corp.
Conic Corp.
Conner Brothers Construction Co.
Connor Harben Construction Co., Inc.
Conoco, Inc.
Consolidated Electronics, ITT & Westinghouse, JV
Construcciones Aeronauticas SA
Contel Federal Systems, Inc.
Continental Construction Co.
Continental Fritz, JV
Continental Maritime Industries
Continental Maritime of San Diego
Control Data Corp.
Conventional Munitions Systems
Coonrod & Associates Construction Co.
Cornell University
Cosmo Oil Co., Ltd.
Costruzioni Aero
Cox Construction, Inc.
Craddock Terry, Inc.
Cray Research, Inc.
Criton Technologies
Crowley Maritime Corp.
Crysen Corp.
Cubic Corp.
Cummins Engine Co., Inc.
Curtis Wright Corp.
Custom Steel Structures, Inc.
DCS Corp.
Daedalean, Inc.
Daimler Benz AG
Dames & Moore
Dartco Mfg., Inc.
Data General Corp.
Dataproducts New England, Inc.
Day & Zimmerman, Inc.
Dayton Power & Light Co., The
De Nardi Construction Co.
Deere John Capital Corp.
Defense Systems Co., Inc.
Del Jen, Inc.
Delta Dental Plan of California
Delta Industries
Dematteis Leon D. Construction Corp.
Derecktor Robert E. of Rhode Island
Detyens Shipyards, Inc.
Deval Corp.
Devils Lake Sioux Mfg. Co.
Devils Lake Sioux Tribe
Diagnostic Retrieval Systems
Diamond Shamrock Refining
Digital Equipment Corp.
Diversified Turnkey Construction
Donna Refinery Partners, Ltd.
Draper, Charles Stark Laboratories, Inc.
Dresser Industries, Inc.
Dresser Rand Co.
Du Pont, E.I. De Nemours & Co.
Dual & Associates, Inc.
Dunn Construction Co.
Dynamic Science, Inc.
Dynamics Corp. of America
Dynamics Research Corp.
Dynaspan Services Co.
Dynateria, Inc.
Dyncorp
Dynetics, Inc.
ECC International Corp.
EC Corp. of Oak Ridge
ECI Construction, Inc.
EER Systems Corp.
EG&G, Inc.
EG&G Intertech, Inc.
EG&G Reticon
EG&G Washington Analytical Services Center
ESL, Inc.
E Systems, Inc.
Eagle Technology, Inc.
Earth Technology Corp.
Eastern Canvas Products, Inc.
Eastman Kodak Co.
Eaton Corp.
Ebasco Services, Inc.
Economics Technology Associates
Edo Corp.
El Paso Electric Co.
El Paso Refining Co., Ltd.
Eldyne, Inc.
Electro Methods, Inc.
Electronic Data Systems Corp.
Electronic Warfare Associates
Electrospace Systems, Inc.
Elektro Radio Klein
Elf France
Elkem Metals Co.
Elwyn, Inc.
Emco, Inc.
Emerald Maintenance, Inc.
Emerson Electric Co.
Encorp
Engineered Air Systems, Inc.
Engineering & Economics Research
Entwistle Co., Inc.
Environmental Research
Environmental Science & Engineering
Evans & Sutherland Computer Corp.
Ex Cell 0 Corp.
Executive Resource Associates
Exide Electronics Group, Inc.
Exxon Corp.
FEL Corp.
FL Aerospace Corp.
FMC Corp.
FMS Corp.
FN Mfg., Inc.
F2M, Inc.
Fabrique Nationale Herstal SA
Fairchild Industries, Inc.
Fairchild Weston Systems, Inc.
Falcon Microsystems, Inc.
Falcon Systems, Inc.
Farrell Lines, Inc.
FEBROE (Frank E. Basil & Burns & Roe JV)
Federal Data Corp.
Federal Electric Corp.
Federal Technology Corp.
Fiber Technology Co.
Fina Oil & Chemical Co.
Firestone, Inc.
Fisher King Marine Services
Flight International Group, Inc.
Flightsafety International, Inc.
Florida Power & Light Co.
Fluke, John Mfg. Co., Inc.
Fluor Corp.
Flying Tiger Line, Inc.
Flying Tiger, United Parcel Service, Tower Air, & United Airlines JV
Foamfab, Inc.
Fokker BV
Foley Co.
Ford Aerospace & Communications Corp.
Forster Enterprises, Inc.
Forstmann & Co., Inc.
Foundation Health Corp.
Freightliner Corp.
Frontier Engineering, Inc.
Frontier Oil & Refining Co.
Fru Con Construction Corp.
G&C Enterprises, Inc.
G&F Co.
GEC Avionics, Ltd.
GTE Government Systems, Inc.
GTE Products Corp. (Delaware)
Gaeco International, Inc.
Gaston & Associates, Inc.
Gay Robert Construction Co.
Geittmann Woodruff, Inc.
Gencorp, Inc.
General Battery Corp.
General Construction & Manson JV
General Defense Corp.
General Dynamics Corp.
General Dynamics Corp. & Westinghouse Electric Co., JV
General Electric Co.
General Foods Corp.
General Instrument Corp. (Delaware)
General Mills, Inc.
General Motors Corp.

General Offshore Corp.
General Oil Corp.
General Physics Corp.
General Railroad Equipment & Services Co.
General Research Corp.
General Ship Corp.
General Signal Corp.
Gentex Corp.
Geo Centers, Inc.
Georgia Power Co.
Georgia Technical Research Institute
Gilbert Western Corp.
Global Associates & Phillips Cartner JV
Gold Star Petroleum, Inc.
Goodrich, B.F. Co.
Goodyear Tire & Rubber Co.
Gould, Inc.
Government Technology Services
Grammtech, Inc.
Gramoll Construction Co.
Great Lakes Dredge & Dock Co.
Great Lakes International
Green Construction Co.
Greenbrier Industries, Inc.
Greenland Contractors
Grey Advertising, Inc.
Grimberg, John C. Co., Inc.
Groves, S.J. & Sons Co.
Grumman Aerospace Corp.
Grumman Corp.
Grumman Data Systems Corp.
Gulf Coast Trailing Co.
Gulfstream Aerospace Corp. (Georgia)
Gull, Inc.
H&H Meat Products, Inc.
HAC Corp.
HR Textron, Inc.
Halter Marine, Inc.
Hamilton Enterprises, Inc.
Hamilton Technology, Inc.
Harbert International, Inc.
Harris Corp.
Harsco Corp.
Hawaiian Airlines, Inc.
Hawaiian Electric Co., Inc.
Hawaiian Independent Refinery
Hawaiian Tug & Barge Corp.
Hayes International Corp.
Hazeltine Corp.
Heckethorn Mfg. Co.
Held & Francke
Hellmuth Obata & Kassabaun
Hensel Phelps Construction Co.
Hercules Engines, Inc.
Hercules, Inc.
Hermes Consolidated, Inc.
Hewlett Packard Co.
Hill Constructors, Inc.
Hilton Systems, Inc.
Hoffman Corp.
Hoffman La Roche, Inc.
Hogan & Tingey Construction Co.
Holmes & Narver, Inc.
Holston Defense Corp.
Honam Oil Refinery Co., Ltd.
Honeywell Federal Systems
Honeywell, Inc.
Honolulu Shipyard, Inc.
Hooks, Mike, Inc.
Horizons Technology, Inc.
Howell Instruments, Inc.
Howmet Corp.
Hudson Institute, Inc.
Hughes Aircraft & Raytheon Co. JV
Hughes Aircraft Co.
Hunt Building Corp.
Huttenbauer E. & Son, Inc.
Hyman, George Construction Co.
Hyster Co.
ICI Americas, Inc.
IIT Research Institute
I Net, Inc.
IFR Systems, Inc.
IPAC
ISC Defense & Space Group, Inc.
IT Corp.
ITT & Varo JV
ITT Corp.
Iber C. & Sons, Inc.
Idemitsu Kosan Co., Ltd.
Il Kwang Ind. Co., Ltd.
Imo Industries, Inc.
Imperial Oil Co., Inc.
Incore, Inc.
Industrial Data Link Corp.
Information Spectrum, Inc.
Information Systems Networks Corp.
Infotec Development, Inc.
Ingalls Shipbuilding, Inc.
Institute for Defense Analysis
Integrated Microcomputer Systems
Integrated Systems Analysts
Inter Marine, USA
Intercontinental Mfg. Co.
Intergraph Corp.
Intermarine, USA
Intermetrics, Inc.
Intermountain Construction Co.
International Business Machines Corp.
International Marine Carriers
International Technology Corp.
Interstate Electronics Corp.
Irvin Industries, Inc.
Israel Aircraft Industries
Israel Aircraft Industries, International
Israel Military Industries
Isratex, Inc.
J&J Maintenance, Inc.
JT Construction Co., Inc.
Jacksonville Shipyards, Inc.
James, T.L. & Co., Inc.
Jay Dee Sportswear, Inc.
Jaycor
Jersey Central Power & Light Co.
Jesup Group, Inc.
Johns Hopkins University
Johnson Controls, Inc.
Jonathan Corp., The
Jones Group, Inc., The
Jordan, E.C. Co.
Jordan, W.M. Co., Inc.
Jorgensen, Roy Associates, Inc.
K&M Maintenance Services
KDI Precision Products, Inc.
Kaiser Engineers & Constructors
Kaiser Engineers, Inc.
Kaman Aerospace Corp.
Kaman Corp.
Kaman Sciences Corp.
Kass Management Services, Inc.
Kay & Associates, Inc.
Kearfott Guidance & Navigation Systems
Keco Industries, Inc.
Kellogg Sales Co.
Kelsey Hayes Co.
Key Airlines, Inc.
Kidde, Inc.
Kilgore Corp.
Kimberly Clark Corp.
Kimmins Contracting Corp.
Koehring Co.
Kollmorgen Corp.
Korea Electric Power Corp.
Korean Air Lines Co., Ltd.
Korte Plocher Construction Co.
Kovatch Corp.
Kuwait National Petroleum Co.
LTV Aerospace & Defense Co.
Lake Shore, Inc.
Laketon Refining Corp.
Las Energy Corp.
Leal Petroleum Corp.
Lear Siegler Diversified Holdings
Learjet Corp.
Libby Corp.
Life Cycle Engineering, Inc.
Lifeco Services Corp.
Light Helicopter Turbine Engine Co.
Lilly, Eli & Co.
Link Training Services Corp.
Little, Arthur D., Inc.
Litton Industries, Inc.
Litton Systems, Inc.
Lockheed Corp.
Lockheed Electronics Co.
Lockheed Missiles & Space Co.
Locus, Inc.
Loggins Meat Co.
Logicon, Inc.
Logistics Management Institute
Logistics Support Group
Loral Corp.
Loral Electro Optical Systems
Louisville Gas & Electric Co.
Lucas Industries, Inc.
Lucas Western, Inc.
Luhr Bros., Inc.
Lull Corp.
Lyda, Inc.
Lykes Bros, Inc.
MCI Telecommunications Corp.
MDBG Maherialdepot Betriesbges
MSM Security & Patrol Service
M/A Com Linkabit Corp.
Mac, H. B., Inc.
Macalloy Corp.
Maersk Line, Ltd.
Magnavox Government & Industrial Electronics Co.
Magnetek, Inc.
Mandex, Inc.
Mantech International Corp.
Mapco, Inc.
Mar, Inc.
Mar Ship Operators, Inc.
Marable, W.M., Inc.
Marine Hydraulics International
Marinette Marine Corp.
Marion Laboratories, Inc.
Marquardt Co., The
Martin Baker Aircraft Co., Ltd.
Martin Electronics, Inc.
Martin Marietta Corp.
Martin Marietta, Diehl Co's., Thorn & Thompson JV
Martin Marietta Corp. & Westinghouse Electric Co., JV
Mason Chamberlain, Inc.
Mason Hanger Silas Mason, Inc.
Massachusetts Institute of Technology
Maxwell Laboratories, Inc.
McAmis, J.E., Inc.
McDermott, Inc.
McDonnell Douglas Astronautics
McDonnell Douglas Corp.
McDonnell Douglas & Bell Helicopter Textron JV

McDonnell Douglas & General Dynamics JV
McDonnell Douglas Helicopter
McDonnell Douglas Training Systems, Inc.
McLaughlin Research Corp.
McMaster Construction, Inc.
McMullan, Robert & Son, Inc.
McMullen, John J. Associates, Inc.
McRae Industries, Inc.
Maremont Corp.
Med Atlantic Petrole
Menasco, Inc.
Merchants National Corp.
Merck & Co., Inc.
Meredith Construction Co., Inc.
Messerschmitt Boelkow Blohm
Metal Trades, Inc.
Metallgesellschaft, Corp.
Metric Construction Co., Inc.
Metric Systems Corp.
Metro Machine Corp.
Michael Industries, Inc.
Midco Construction Corp.
Milcom Systems Corp.
Miller Herman, Inc.
Miltope Corp.
Mine Safety Appliances Co.
Minnesota Mining & Mfg. Co.
Minowitz Mfg. Co., Inc.
Mip Instandsetzungsbetric
Mission Research Corp.
Mit Con, Inc.
Mitre Corp.
Mitsubishi International Corp.
Mobil Corp.
Modern Technologies Corp.
Montana Refining Co.
Montgomery, J. M. Consulting Engineers
Moog, Inc.
Morrison Knudsen Co., Inc.
Morrison Knudsen International Co.
Mortenson, M. A. Co.
Motor Oils Hellas Corinth Refinery
Motorola Communications & Electronics
Motorola, Inc.
Munro & Co., Inc.
Murdock Engineering Co.
NCR Comten, Inc.
NCR Corp.
Nabisco Brands, Inc.
Natco Limited Partnership
Nation, Inc.
National Academy of Sciences
National Capitol Systems, Inc.
National Projects, Inc.
National Steel & Shipbuilding Co.
National Systems & Research Co.
Naughton Energy Corp.
Nav Com Defense Electronics, Inc.
Navajo Refining Co.
Nec Overseas Market Development
Needham, Inc.
Nero & Associates, Inc.
Nestle Foods Corp.
Network Solutions, Inc.
New Mexico, State of
Newberg, Gust K. Construction Co.
Newport News Shipbuilding & Dry Dock Co.
Nichols Research Corp.
Nimas Corp.
Nisshin Service Co., Ltd.
Norden Systems, Inc.
Norfolk Shipbuilding & Dry Dock Corp.
North American Mechanical Services
North Atlantic Industries, Inc.
Northern Telecom, Inc. (Delaware)
Northrop Corp.
Northrop Worldwide Aircraft Services, Inc.
Northwest Airlines & Federal Express JV
Nova Group, Inc.
ORC Industries, Inc.
Oasis Homes Construction, Inc.
Ocean Technology, Inc.
Octagon Process, Inc.
Ohbayashi Corp.
Okinawa Electric Power Co.
Olin Corp.
Osborne MKB JV
Oshkosh Truck Corp.
Oto Melara SPA
Owl International, Inc.
PA GMBH
PHH Homequity Corp.
PHP Healthcare Corp.
PCL Civil Constructors, Inc.
PRC VSE & Associates JV
PSI Mobile Products, Inc.
Pace Contracting Co.
Pacer Systems, Inc.
Pacific Gas & Electric Co.
Pacific Ship Repair & Fabrication
Pacific Sierra Research Corp.
Pacifica Services, Inc.
Pall Land & Marine Corp.
Pan Am World Airways, Air America, & Connie Kalitta Services JV
Pan Am World Airways, Connie Kalitta Services, & American Trans Air JV
Pan Am World Airways, Evergreen International Airlines, & Tower Air, Inc. JV
Par Technology Corp.
Parker Hannifin Corp.
Parsons, Ralph M., Co., The
Patrol Ofisi A S Genel Mud
Patton Tully Transportation Co.
Peat, Marwick, Main, & Co.
Peerless Oil & Chemical Co.
Pence, Howard W., Inc.
Penick, T. B. & Sons, Inc.
Pennsylvania Shipbuilding Co.
Pennsylvania State University
Pentastar Electronics, Inc.
Perkin Elmer Corp., The
Person System Integration, Ltd.
Peter & Rangel Construction Service
Peterson Builders, Inc.
Petroleos Del Mediterraneo SA
Pfizer, Inc.
Pharaoh Construction Co.
Phelps, Inc.
Philip Morris Companies, Inc.
Phoenix Petroleum Co.
Physics International Co.
Pickens Bond Construction Co.
Pine Bluff Sand & Gravel Co.
Piqua Engineering, Inc.
Pizzagalli Construction Co.
Planning Research Corp.
Planning Systems, Inc.
Platt Mfg. Corp.
Plessey Dynamics Corp.
Pneumo Abex Corp.
Potomac Electric Power Co.
Power Conversion, Inc.
Precision Castparts Corp.
Precision Machining, Inc.
Prestolite Electric, Inc.
Pride Refining, Inc.
Pritchard Services Group America
Proctor & Gamble Distributing Co.
Professional Service Industries
Property Service Agency
Propper International, Inc.
Public Service Co. of New Mexico
Puerto Rico Sun Oil Co., Inc.
Puget Sound Tug & Barge Co.
Purvis Systems, Inc.
QED Systems, Inc.
Quaker Oats Co., The
Questech, Inc.
Quintron Corp.
Quintron Systems, Inc.
R&D Associates
R&D Maintenance Services
RCA Global Communications, Inc.
RG&B Contractors, Inc.
RJO Enterprises, Inc.
RJR Nabisco, Inc.
RP International Technologies
Racal Communications, Inc.
Radian Corp.
Rafael Armaments Development
Rail Co.
Ram Systems GMBH
Rand Corp, The
Raven Industries, Inc.
Raymond Engineering, Inc.
Rayovac Corp.
Raytheon Co.
Raytheon Service Co.
Refinery Associates of Texas
Republic Health Corp.
Research Management Corp.
Research Triangle Institute
Resource Consultants, Inc.
Rexon Technology Corp.
Reynolds Metals Co.
Reynolds, R. J. Tobacco Co.
Rice, James Ed
Right Away Foods Corp.
Riha Construction Co.
Robbins Gioia, Inc.
Rockwell International Corp.
Roe Enterprises, Inc.
Rohr Industries, Inc.
Rolls Royce, Inc.
Rosemount, Inc.
Rosenblatt M. & Son, Inc.
Ross Engineering Co., Inc.
Royal Norwegian Naval Material
Royal Ordnance Ammunition, Ltd.
Russell Corp.
Ryan Co., The
Ryan Walsh, Inc.
SCI Systems, Inc.
SLI Avionics Systems Corp.
SMS Data Products Group, Inc.
SRI International
SRS Technologies
STV Engineers, Inc.
Sabreliner Corp.
Sac & Fox Industries, Ltd.
Sachs Freeman Associates, Inc.
Sacramento Municipal Utility District
Saft America, Inc.
San Antonio City Public Service
Sanders Associates, Inc.
Sargent Fletcher Co.
Sargent H. E., Inc.
Sargent Industries, Inc.
Scallop Corp.
Schafer, W. J. Associates, Inc.
Schlosser, W. M. Co., Inc.
Schneider, Inc.
Science Applications International Corp.
Scientific Atlanta, Inc.
Sea Land Service, Inc.
Sealift, Inc.

Seaward Marine Services, Inc.
Sellers Oil Co., Inc.
Selm Servizi Elettrici Montedi
Semcor, Inc.
Sequa Corp.
Serv Air, Inc.
Service Engineering Co., Inc.
Service Packing Co.
Shell Nederland Raffinadere
Shell Oil Co.
Siemens Corp.
Sikorsky International Products
Silicon Graphics, Inc.
Simmonds Precision Products
Simulaser Corp.
Singer Co., The
Sippican, Inc.
Slocomb, J. T. Co.
Smith & Nephew, Inc.
Smiths Industries, Inc., USA
Softech, Inc.
Sohio Oil Co.
Soletanche & Rodio, Inc.
Sonalysts, Inc.
South Carolina Research Authority
South Coast, Inc.
Southern California Edison Co.
Southern Packaging & Storage Co.
Southern Research Institute
Southern Systems, Inc.
Southwest Marine San Francisco
Southwest Marine, Inc.
Southwest Mobile Systems Corp.
Southwest Research Institute
Southwood Builders, Inc.
Space Applications Corp.
Space Data Corp.
Sparta, Inc.
Sparton Corp.
Sparton Electronics Florida
Spaw Glass Construction, Inc.
Sperry Corp.
Staffco Construction Co.
Standard Products Co., The
Stanford Leland Junior University
Stanford Telecommunications
Stearns Catalytic World Corp.
Stella P. J. Construction Corp.
Stellar Industries, Inc.
Sterling Federal Systems, Inc.
Steuart Petroleum Co.
Stewart & Stevenson Services
Stewart Warner Corp.
Storage Technology Corp.
Strong Bill Enterprises, Inc.
Sullivan Enterprises, Inc.
Sumitomo Heavy Industries, Ltd.
Summit Technologies, Inc.
Sun Microsystems, Inc.
Sun Refining & Marketing Co.
Sundstrand Corp.
Sundt Corp./Atlantic Gulf & Pacific Co. of Manila JV
Sundt Corp.
Sunkyong, Ltd.
Support Systems Associates
Supreme Beef Processors, Inc.
Sverdrup Technology, Inc.
Synetics Corp.
Syscon Corp.
System Development Corp.
System Dynamics, Inc.
Systems & Simulations, Inc.
Systems Engineering Associates
Systems Planning Corp.
Systems Research & Applications
Systems Research Laboratories, Inc.
TBG, Inc.
TLT Construction Corp.
TRW, Inc.
Tadiran Electronic Industries
Taylor Group, Inc.
Technical & Management Services Corp.
Technicolor, Inc.
Technology Communications International
Technology Scientific Services
Tecolote Research, Inc.
Tecom, Inc.
Tektronix, Inc.
Teledyne Industries, Inc.
Teleflex, Inc.
Telos Corp.
Tennessee Apparel Corp.
Tennier Industries, Inc.
Tesoro Alaska Petroleum Co.
Texaco, Inc.
Texas Instruments, Inc.
Texcom, Inc.
Texstar, Inc.
Textron, Inc.
Thiokol Corp.
Thomas, R. S. Construction Co.
Thompson, J. Walter Co.
Tilley Constructors & Engineers
Toa Dors Kogyo Co. Ltd Amori Of
Todd Pacific Shipyards Corp.
Top Gallant Group, Inc.
Tracor Applied Sciences, Inc.
Tracor Flight Systems, Inc.
Trak International, Inc.
Trans European Awy Maint & Agu
Trans Tec Services, Inc.
Treadwell Corp.
Tricil Environmental Response
Trilectron Industries, Inc.
Unified Industries, Inc.
Union Carbide Corp.
Union Corp.
Union Explosivos Rio Tinto SA
Uniroyal, Inc.
Unisys Corp.
United Airlines Services Corp.
United Coupon Clearing House
United Engineers & Constructors
United Technologies Corp.
Universal Canvas, Inc.
Universal Energy Systems, Inc.
Universal Propulsion Co.
University of California
University of Dayton
University of Illinois
University of Maryland
University of Minnesota
University of New Mexico
University of Southern California
University of Texas System
University of Washington
Urban General Contractors, Inc.
Urdan Industries USA, Inc.
Utah Power & Light Co.
Utah State University
Utility Tool & Body Co., Inc.
VBQ, Inc.
VSE Corp.
Valentec International Corp.
Valleydale Packers, Inc.
Vanee Foods Co.
Varian Associates, Inc.
Varo, Inc.
Vector Research, Inc.
Veda, Inc.
Velcon Filters, Inc.
Vickers, Inc.
Viereck Co., Inc.
Viking Systems International
Vinnell Corp.
Virtexco Corp.
Vitro Corp.
Vitro Services Corp.
Vitronics, Inc.
Vol Mar Construction, Inc.
W&J Construction Corp.
Walsky Construction Co.
Wang Laboratories, Inc.
Warehouses Service Agency
Watkins Johnson Co.
Webb Electric Co. of Florida
Weeks Dredging & Contracting Co.
Wellco Enterprises, Inc.
Western Petroleum Co.
Western Research Corp.
Westinghouse Electric Corp.
Westminster Co., Inc.
Weston, Roy F., Inc.
Whitesell Green, Inc.
Wiggins Lift Co., Inc.
Wilbros Butler Engineers, Inc.
Williams International Corp.
Wilson, Robert F., Inc.
Wisconsin Physicians Service Insurance
Woods Hole Oceanographic Institute
Woodward, Clyde Consultants
Woodward Governor Co.
World Airways, Rosenbalm Aviation, Key Airlines, American Airlines, Evergreen International & Emery Worldwide JV
Wright Associates, Inc.
Wylie, C. E. Construction Co.
Xerox Corp.
Young & Rubicam, Inc.
Yordi Construction, Inc.
Zachry, H. B. Co.
Zenith Data Systems Corp.
Zenith Electronics Corp.

Dated: December 21, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-30143 Filed 12-29-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

U.S. Coast Guard

33 CFR Part 165

[COTP Philadelphia, PA Regulation 89-11]

Safety Zone Regulations: Marcus Hook Anchorage (Anchorage 7), Mantua Creek Anchorage (Anchorage 9), and Deepwater Point Anchorage (Anchorage 6)

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Delaware River that includes the Marcus Hook Anchorage (Anchorage 7), Mantua Creek Anchorage (Anchorage 9), and Deepwater Point Anchorage

(Anchorage 6). The safety zone is needed to protect vessels from safety hazards associated with dredging operations in Marcus Hook Anchorage and to minimize temporary port congestion while the dredging operations are ongoing.

The Marcus Hook Range ship channel in the vicinity of the dredging operation is open to vessel traffic. Marcus Hook Anchorage (Anchorage 7) is open for anchoring north or south of buoy "D" (LLNR 2925) depending upon the dredge's position in the Marcus Hock Anchorage. Vessels over 700 feet in length are subject to anchorage restrictions in Deepwater Point and Mantua Creek Anchorages (Anchorages 6 and 9).

EFFECTIVE DATES: This regulation is effecive from 8:00 a.m., November 22, 1989 and terminates at 8:00 a.m., December 31, 1989, unless terminated sooner by the Captain of the Port, Philadelphia.

FOR FURTHER INFORMATION CONTACT: LT P.A. Jensen, at the Captain of the Port, Philadelphia, (215) 271–4892.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effectve in less than 30 days after **Federal Register** publication. The Coast Guard was not officially informed of the date dredging operations would ccmmence until November 15, 1989. Publishing an NPRM and delaying its effective date would be contrary to the public interest, since immediate action is needed to respond to potential hazards to vessel traffic caused by the presence of the dredge in the anchorage.

Drafting Information: The drafters of this regulation are LT. P. A. Jensen, project officer for the Captain of the Port, Philadelphia, and LT. S. M. Fitten, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of the Regulation: The hazards requiring this regulation result from maintenance dredging of the Marcus Hook Anchorage. The Marcus Hook Range ship channel will be open. Vessels will be permitted to anchor south of buoy "D" (LLNR 2925) in the Marcus Hook Anchorage (Anchorage 7) while the dredge is in the northern section and north of buoy "D" while the dredge is in the southern section of the anchorage in order to reduce the hazards associated with dredging of the anchorage.

Dredging will commence at the north end of the anchorage and continue to the southern end in the vicinity of buoy "A" (LLNR 2910). Anchorage restrictions in Mantua Creek Anchorage and Deepwater Point Anchorage are being imposed to accommodate those vessels that will be prevented from anchoring in Marcus Hook Anchorage. This regulation takes effect at 8:00 a.m., November 22, 1989.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation: In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.T5107 is added to read as follows:

§ 165.T5107 Safety Zone: Marcus Hook Anchorage (Anchorage 7), Mantua Creek Anchorage (Anchorage 9), Deepwater Point Anchorage (Anchorage 6), Delaware River.

(a) *Location.* The following areas are a safety zone: The Marcus Hook Anchorage (Anchorage 7), as delineated on National Ocean Survey Chart 12312, within 150 yards of dredging operations, Mantua Creek Anchorage (Anchorage 9), and Deepwater Point Anchorage (Anchorage 6), located in the Delaware River, as described in § 110.157 of this title.

(b) *Regulations:* (1) No vessel may enter or remain in the Marcus Hook Anchorage within 150 yards of dredging operations. Vessels transiting the area shall use Marcus Hook Range ship channel.

(2) Vessels shall obtain permission from the Captain of the Port to anchor in Marcus Hook Anchorage at least 24 hours in advance.

(3) Vessels anchoring in Marcus Hook Anchorage (Anchorage 7) shall anchor on the north or south side of buoy "D" (LLNR 2925) opposite the dredge's position within the anchorage.

(4) No more than two vessels will be permitted to anchor in Marcus Hook Anchorage at one time and for no more than 48 hours.

(5) In addition to the general regulations contained in § 110.157(b) of this title, before anchoring in the Mantua Creek or Deepwater Point Anchorages (Anchorages 9 and 6):

(i) Vessels over 700 feet in length shall obtain permission from the Captain of the Port to anchor in Deepwater Point or Mantua Creek Anchorage (Anchorage 6 or 9).

(ii) Vessels between 700 and 750 feet long shall have one tug alongside while anchored in either Deepwater Point or Mantua Creek Anchorage (Anchorage 6 or 9).

(iii) Vessels greater than 750 feet long shall have two tugs alongside while anchored in either Deepwater Point or Mantua Creek Anchorage (Anchorage 6 or 9).

(4) Each tug alongside a vessel meeting the restrictions in either paragraph (b)(3)(ii) or (iii) of this section must have a minimum rating of 1000 shaft horsepower.

(5) Any vessel operating within this zone shall comply with the directions of the Captain of the Port, Philadelphia, or his designated representative.

(c) *Effective Date.* This regulation is effective from 8:00 a.m., November 22, 1989 and terminates at 8:00 a.m., December 31, 1989, unless terminated sooner by the Captain of the Port, Philadelphia.

Dated: November 17, 1989.

L. A. Murdock,

Captain, U.S. Coast Guard, Captain of the Port, Philadelphia.

[FR Doc. 89–30299 Filed 12–29–89; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[FRL–3701–2]

Standards of Performance for New Stationary Sources (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP); Delegation of Authority to the State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: This notice announces an extension of previously-issued delegations of authority for the implementation and enforcement of the federal Standards of Performance for New Stationary Sources (NSPS), 40 CFR part 60, and the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 CFR part 61. The action involved the EPA Region VII office and the State of Missouri. The standards of performance that have been established by EPA for three (3) NSPS source categories have been added to the NSPS delegation of authority. The NSPS and NESHAP delegations of authority now include many source categories and/or

pollutants for which federal standards have been promulgated by the EPA through July 1, 1988.

EFFECTIVE DATE: January 2, 1990.

ADDRESSES: All requests, reports, applications, submittals and such other communications that are required to be submitted under 40 CFR part 60 or part 61 (including the notifications required to be submitted under subpart A of said regulations) for affected facilities or activities in Missouri should be sent to the Missouri Department of Natural Resources (MDNR), P.O. Box 176, Jefferson City, Missouri 65102. A copy of all subpart A related notifications concerning said facilities or activities must also be sent to the attention of the Director, Air and Toxics Division, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Charles W. Whitmore, Chief, Air Compliance Section, Air Branch, U.S. EPA, Region VII, at the above address (913/236–2896 or FTS: 757–2896).

SUPPLEMENTARY INFORMATION: Sections 111(c) and 112(d) of the Clean Air Act allow the Administrator of the Environmental Protection Agency (i.e., EPA or the agency) to delegate to any state government concurrent authority to implement and enforce the standards promulgated by the agency under 40 CFR part 60 and 40 CFR part 61, respectively. When a delegation is issued, the agency retains concurrent authority to implement and enforce the delegated standards. A delegation of authority basically shifts the initial responsibility for implementation and enforcement of the standards from the agency to the state government.

On October 29, 1984, the EPA regional office and the State of Missouri entered into a delegation of authority agreement whereby the state would automatically receive concurrent authority to implement and enforce federal NSPS and NESHAP standards (and the delegable provisions relating to said standards) upon the adoption of the standards by the state government (see 50 FR 933).

Prior to October 29, 1984, Missouri was delegated authority to implement and enforce the standards for numerous source categories and activities in various delegation and extension of authority actions. These previous delegation and extension of authority actions are not affected by the action described below.

Missouri recently updated its rules to incorporate, by reference, the provisions of 40 CFR part 60 and part 61 as in effect on July 1, 1988, except with regard to certain specified provisions, source categories and/or pollutants. The updating action, in effect, incorporated the standards for three (3) additional NSPS source categories that were promulgated by the agency between July 1, 1987, and July 1, 1988. No revisions of a substantive nature were made by EPA to the NESHAP regulation during the time period in question. The effective date of the state's updating action was October 27, 1989. The MDNR informed the agency of its updating actions in a letter to the EPA regional office dated October 24, 1989.

In a letter to the MDNR, dated November 15, 1989, the agency acknowledged the state's updating action and the concurrent automatic delegation of authority regarding the additional standards mentioned below. The extension of delegated authority occurred under the terms of the above-mentioned October 29, 1984, automatic delegation of authority agreement.

Interested individuals are informed that, as of October 27, 1989, the State of Missouri has EPA's authorization to implement and enforce the federally-established standards (and related delegable requirements) for the following additional NSPS source categories, including the requirements of amended, previously-delegated, source categories (e.g., NSPS Subpart Db):

NSPS:

Subpart AAA—Residential Wood Heaters;
Subpart BBB—Rubber Tire Manufacturing Industry; and,
Subpart TTT—Surface Coating of Plastic Parts for Business Machines.

Effective immediately, all reports, correspondence, and such other communications that are required to be submitted under the NSPS or NESHAP regulation for facilities or activities in Missouri affected by the amended delegations of authority should be sent to the Missouri Department of Natural Resources at the above address rather than to the EPA Region VII office, except as noted below.

A copy of each notification required to be submitted under Subpart A of 40 CFR part 60 or part 61, must also be sent to the attention of the Director, Air and Toxics Division, U.S. EPA Region VII, at the above address.

Each document and letter mentioned in this notice is available for public inspection at the Air Branch office of the EPA regional office.

This notice is issued under the authority of sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 7411 and 7412).

Dated: December 7, 1989.

Morris Kay,

Regional Administrator.

[FR Doc. 89–30348 Filed 12–29–89; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201–1, 201–2, 201–23, and 201–24

[FIRMR Temp. Reg. 13, Supp 3]

Temporary Implementation of Title VIII, Paperwork Reduction Reauthorization Act of 1986, Public Law 99–500 Regarding Automatic Data Processing Equipment

AGENCY: Information Resources Management Service, GSA.

ACTION: Temporary regulation, supplement.

SUMMARY: This supplement extends Federal Information Resources Management Temporary Regulation 13 for one additional year. Temporary Regulation 13 implemented applicable portions of the Paperwork Reduction Reauthorization Act of 1986. The statute provided a new definition of "automatic data processing equipment" under Pub. L. 89–306, as amended (Brooks Act). Supplement 1 extending Temporary Regulation 13 to December 23, 1988 was published in the Federal Register on December 8, 1987 (52 FR 46468). Supplement 2 extending Temporary Regulation 13 to December 23, 1989 was published in the Federal Register on November 22, 1988 (53 FR 47198). The intent of this extension is to continue temporary implementation of the statute until a proposed amendment is codified. See "Implementation of Title VIII, Paperwork Reduction Reauthorization Act of 1986, Regarding Automatic Data Processing Equipment", which appeared in the Federal Register on August 23, 1988 (53 FR 32085).

DATES: *Effective date:* December 23, 1989.

Expiration date: December 23, 1990.

Comments are due: February 1, 1990.

ADDRESS: Comments should be addressed to: General Services Administration (KMPR), Project 90-01S, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: R. Stewart Randall, Jr., Regulations Branch (KMPR), Office of Information Resources Management Policy, telephone (202) 566–0194 or FTS, 566–0194.

SUPPLEMENTARY INFORMATION: (1) Temporary Regulation 13 was published in the **Federal Register** on December 23, 1986 (51 FR 45887). Pursuant to 41 U.S.C. 418b(d), the publication of the original rule was waived because of urgent and compelling circumstances to implement Public Law 99–500 which was effective as of October 18, 1986. Supplement 1 extended Temporary Regulation 13 to December 23, 1988 (52 FR 46468). Supplement 2 extended Temporary Regulation 13 to December 23, 1989 (53 FR 47198). The publication of a proposed rule is again waived because the extension of the expiration date of the original rule is of a technical or editorial nature without a change of substance. The rule continues temporary implementation of the statute while additional rulemaking is in progress. See "Implementation of Title VIII, Paperwork Reduction Reauthorization Act of 1986, Regarding Automatic Data Processing Equipment", which appeared in the **Federal Register** on August 23, 1988 (53 FR 32085).

(2) The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This is a Governmentwide regulation that will have little or no cost effect on society. The temporary rule is not likely to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.).

List of Subjects in 41 CFR Parts 201–1, 201–2, 201–23, and 201–24

Computer technology, Government procurement, Government property management, Information resources activities, Competition, Telecommunications.

Authority: 40 U.S.C. 486(c) and 751(f).

In 41 CFR chapter 201, FIRMR Temporary Regulation 13, Supplement 3 is added to appendix A at the end of the chapter.

FIRMR Temporary Regulation 13; Supplement 3

December 19, 1989.

To: Heads of Federal agencies

Subject: FIRMR Implementation of the "Paperwork Reduction Reauthorization Act of 1986" (Title VIII, Public Law 99–500)

1. *Purpose.* This supplement extends the expiration date of FIRMR Temporary Regulation 13 for one additional year. The intent of this extension is to continue temporary implementation of the statute until a proposed amendment is codified.

2. *Effective date.* This regulation is effective December 23, 1989.

3. *Expiration date.* The expiration date of this temporary regulation is extended from December 23, 1989 to December 23, 1990.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 89–30321 Filed 12–29–89; 8:45 am]

BILLING CODE 6820–25–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[Federal Acquisition Circular 84–53]

Federal Acquisition Regulation (FAR); Miscellaneous Amendments; Correction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule; correction.

SUMMARY: This document corrects Federal Acquisition Circular (FAC) 84–53 published in the **Federal Register** on Thursday, November 28, 1989 (54 FR 48978).

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755. Please cite FAC 84–53 correction.

SUPPLEMENTARY INFORMATION: In FR Doc. 89–27616, in the clause at section 52.247–60, the introductory text of paragraph (a), in the third column on page 48997, is corrected to read as follows:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.247–60 Guaranteed Shipping Characteristics.

* * * * *

(a) The offeror is requested to complete subparagraph (a)(1) of this clause, for each part or component which is packed or packaged separately. This information will be used to determine transportation costs for evaluation purposes. If the offeror does not furnish sufficient data in subparagraph (a)(1) of this clause, to permit determination by the Government of the item shipping costs, evaluation will be based on the shipping characteristics submitted by the offeror whose offer produces the highest transportation costs or in the absence thereof, by the Contracting Officer's best estimate of the actual transportation costs. If the item shipping costs, based on the actual shipping characteristics, exceed the item shipping costs used for evaluation purposes, the Contractor agrees that the contract price shall be reduced by an amount equal to the difference between the transportation costs actually incurred, and the costs which would have been incurred if the evaluated shipping characteristics had been accurate.

* * * * *

Dated: December 22, 1989.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

[FR Doc. 89–30322 Filed 12–29–89; 8:45 am]

BILLING CODE 6820–JC–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 90761–9241]

RIN 0648–AC82

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this rule to make two changes to the regulations implementing the fishery management plan for Pacific coast groundfish fisheries in the exclusive economic zone (3–200 nautical miles) off the coasts of Washington, Oregon, and California. The first change requires certain commercially caught groundfish species to be sorted prior to the first weighing after offloading. The second change prohibits possession of unauthorized fixed gear on a fishing vessel. These changes would improve efficiency in enforcing fishing restrictions.

EFFECTIVE DATE: January 29, 1990.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Northwest Region, NMFS), 206–526–6140; or Rodney R. McInnis (Southwest Region, NMFS), 213–514–6199.

SUPPLEMENTARY INFORMATION: Under the Magnuson Fishery Conservation and Management Act (Magnuson Act), a fishery management plan (FMP) for the Pacific coast groundfish fishery off the coasts of Washington, Oregon, and California was prepared by the Pacific Fishery Management Council (Council) and approved by the Secretary of Commerce (Secretary). Implementing regulations are codified at parts 620 and 663 for the domestic fishery and at part 611 for the foreign fishery.

This rulemaking was recommended to the Secretary by the Council and contains two changes to the domestic groundfish regulations. These changes were designed to facilitate enforcement and are described below.

(1) The rule requires that groundfish species with trip limits be sorted prior to the first weighing after offloading. This rule only applies to those deliveries that exceed 3,000 pounds of groundfish (round weight or round weight equivalent).

(2) The rule prohibits possession of unauthorized fixed gear on a fishing vessel operating within the fishery unless such gear is the gear of another vessel that has been retrieved at sea, in which case such gear must be made inoperable or stowed in a manner not capable of being fished. Thus all fishing vessels would be able to retain, for the purpose of disposal on shore, derelict fixed gear which they had become entangled with and retrieved at sea. This prohibition will not apply to vessels bound for Alaska if they do not fish with fixed gear off Washington, Oregon, or California during the same trip.

This rule was proposed in the **Federal Register** on August 30, 1989 (54 FR 35909) with the reasons for taking such actions. Public comments were requested until September 29, 1989. No comments were received and no changes were made to the proposed rule. Therefore, the Secretary concurs with the Council's recommendations and implements this rule as proposed, for the reasons published at 54 FR 35909.

Classification

NOAA issues this final rule under authority of section 305(g) of the Magnuson Act, 16 U.S.C. 1855(g), and it is issued at the request of the Council. The Assistant Administrator for Fisheries, NOAA has determined that this rule is necessary for the conservation and management of the Pacific coast groundfish fishery and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator has determined that this rule falls within a categorical exclusion from the requirements of the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, under NOAA Directive 02–10, because it is routine (i.e., would not result in any significant change from the status quo) and because it has limited potential for effect on the human environment. A biological benefit would accrue from discouraging the use of unauthorized fixed gear because detection would be more likely with shoreside enforcement. In particular, pots without escape panels which are lost at sea continue fishing indefinitely. If use of such fixed gear is lessened, an unquantifiable benefit would result.

The Under Secretary also had determined that it is not a major rule requiring a regulatory impact analysis under Executive Order 12291.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 603 *et seq.* As a result, a regulatory flexibility analysis was not prepared.

This rule does not contain a collection of information requirements for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

This rule implements the FMP and amendments for which consistency determinations have previously been made under the Coastal Zone Management Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 22, 1989.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries.

PART 663—PACIFIC COAST GROUNDFISH FISHERY

For the reasons set forth in the preamble and at 54 FR 35909, 8/30/89, 50 CFR part 663 is amended as follows:

1. The authority citation for 50 CFR part 663 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 663.7, the introductory paragraph is revised to reference § 620.7, and paragraphs (l) and (m) are added as follows:

§ 663.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to:

* * * * *

(l) Fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, if the weight of the total delivery exceeds 3,000 pounds (round weight or round weight equivalent).

(m) Possess, deploy, haul, or carry onboard a fishing vessel subject to these regulations (50 CFR part 663) a set net, trap or pot, longline, or commercial vertical hook-and-line that is not in compliance with the gear restrictions at § 663.26, unless such gear is the gear of another vessel that has been retrieved at sea and made inoperable or stowed in a manner not capable of being fished. The disposal at sea of such gear is prohibited by Annex V of the International Convention for the Prevention of Pollution From Ships, 1973 (Annex V of MARPOL 73/78).

[FR Doc. 89–30315 Filed 12–29–89; 8:45 am]

BILLING CODE 3510–22–M

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50 CFR Parts 672 and 675

[Docket No. 90640–9249]

RIN 0648–AC81

Groundfish of the Gulf of Alaska, Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: The Secretary of Commerce (Secretary) by this notice, amends the rules implementing the Fishery Management Plans (FMP's) for Groundfish of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands (BSAI) area to: (1) Authorize the closure of directed fisheries in the GOA to accommodate incidental catch needs; (2) authorize the reopening of prematurely closed fisheries in the GOA and BSAI area; (3) require fishermen to mark buoys used in pot and hook-and-line fisheries; and (4) make 12:00 noon Alaska local time the starting and ending time for groundfish fishing seasons other than the beginning and end of the calendar fishing year. By this rulemaking, several amendments are made to clarify or update existing regulations. All the amendments are necessary to optimize groundfish yields from the GOA groundfish fishery, facilitate enforcement in the GOA and BSAI groundfish fisheries, or clarify existing regulations. They are intended to further the goals and objectives contained in fishery management plans that govern these fisheries.

EFFECTIVE DATE: January 26, 1990.

ADDRESS: Copies of the documents supporting this rule may be obtained from Steven Pennoyer, Director, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Biologist, MNFS), 907–586–7230.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the exclusive economic zone of the GOA and BSAI are managed by the Secretary under Fishery Management Plans for the Groundfish of the Gulf of Alaska and the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and are implemented by regulations for the foreign fisheries at 50 CFR 611.92 and 611.93 and for the U.S. fisheries at 50 CFR parts 672 and 675. This final rule implements four measures governing the FMP's for the GOA and/or the BSAI. Each of these measures was recommended by the Council at its January 16–19, 1989, meeting. The first measure authorizes the closure of directed fisheries in the GOA prior to the total allowable catches (TACs) for such fisheries being reached to accommodate incidental catch needs. This authority has already been established in the BSAI. The second, third, and fourth measures apply to both the GOA and BSAI. The second measure amends regulatory text at 50 CFR 672.22(a) and 675.20(e) to authorize the reopening of fisheries that have been closed prematurely, if available catch data show that allowable harvest levels have not been reached. The third measure amends regulatory text at 50 CFR 672.23 and establishes a new § 675.23 to specify 12:00 noon, Alaska local time, as the starting and ending time for all fishing seasons other than the beginning and end of the calendar fishing year. The fourth measure amends regulatory text at 50 CFR 672.24 and adds two paragraphs to § 675.24 to require fishermen to mark their gear used in the pot and hook-and-line fisheries. In addition, this final rule makes two minor changes to 50 CFR parts 672 and 675. Paragraph (b) of § 672.23 *Seasons*, is redesignated paragraph (c) and is revised to delete reference to sablefish pots; and in § 672.24 *Gear limitations*, paragraph (a) *Biodegradable escape panels required for all sablefish pots*, is retitled and revised. Description of, and reasons for, these changes are contained in the preamble to the proposed rule. The Secretary invited comments on these measures until September 14, 1989, (54 FR 33737, August 16, 1989). No public comments were received.

On the basis of the supporting documents, Council recommendations, and rationale provided in the preamble to the proposed rule, the Secretary finds that each of the above measures is necessary for fishery conservation and management, and is consistent with the Magnuson Act and other applicable laws.

Specific Changes From the Proposed Rule in the Final Rule

In §§ 672.2 and 675.2, *Definitions*, definitions of "setline" and "skate" are deleted, and in §§ 672.24 and 675.24, *Marking of gear*, the phrase "setline or skate" is replaced with the word "longline". These changes are made because "longline" is already defined and means the same as "setline". In § 672.20(c)(2)(iii)(A) under *Procedure*, paragraphs (c)(2)(iii)(A) (1) and (2) are combined into (c)(2)(iii)(A) without changing the intent of the *Procedure* section. Sections 672.23 and 675.23, *Seasons*, are revised to clarify intent that the 12:00 noon times for openings and closures of fishing seasons is meant to only include seasons other than the 00:01 a.m. beginning and the 12:00 midnight end of the calender fishing year. Otherwise, fishermen would lose 24 hours of fishing time, if the 12:00 noon time included December 31 of the preceding fishing year and January 1 of the new fishing year. In § 675.24, new paragraphs (a) and (b) referred to in the proposed rule are renumbered (d) and (e) to reflect the existence of paragraphs (a) through (c).

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) has determined that this rule is necessary for the conservation and management of the groundfish fishery off Alaska and that it is consistent with the Magnuson Act and other applicable law.

The Alaska Region, NMFS, prepared an environmental assessment for this rule. The Assistant Administrator concluded that no significant impact on the environment will occur as a result of this rule. Copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) may be obtained from the Regional Director at the address above.

The Under Secretary for Oceans and Atmosphere, NOAA determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the socioeconomic impact discussed in the EA/RIR/IRFA prepared by the Alaska Region, NMFS.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have significant economic impact on a substantial number of small entities. As a result a final regulatory flexibility analysis was not prepared. The effects that have been identified, would in general, be positive. These effects are summarized in the Classification Section of the proposed rule.

This rule does not contain a collection of information requirements subject to the Paperwork Reduction Act.

NOAA has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Agreement is presumed because the State agency did not respond within the allowed period.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries.

Dated: December 22, 1989.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, parts 672 and 675 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.20, paragraph (c)(2) is redesignated as (c)(3) and a new paragraph (c)(2) is added to read as follows:

§ 672.20 General limitations.

(c) * * *

(2) *Notices of bycatch.* (i) When the Regional Director determines that the amount of the TAC of any target species or of the "other species" category that has not been caught during the fishing year is necessary for bycatch in fisheries for other groundfish species during the remainder of the fishing year, the Secretary will publish a notice in the **Federal Register** prohibiting directed fishing for that species or the "other

species" category for the remainder of the fishing year.

(ii) *Data.* All information relevant to one or more of the following factors may be considered in making determinations under paragraph (c)(2) of this section:

(A) The risk of biological harm to the groundfish species being retained;

(B) Whether a bycatch set-aside is required; and

(C) Socioeconomic impact of allocation to bycatch needs.

(iii) *Procedure.* (A) No notice issued under this section will take effect until the Secretary has filed the proposed notice for public inspection with the Office of the Federal Register, and requested public comments for a period of 30 days from the date of filing before it is made final, unless the Secretary finds for good cause that such notice and public procedure thereon is impracticable, unnecessary, or contrary to the public interest.

(B) If the Secretary decides, for good cause, that setting aside bycatch is necessary without affording a prior opportunity for public comment, written public comments on the necessity for, and extent of, the bycatch declaration will be received by the Regional Director for a period of 15 days after the effective date of the notice.

(C) During any such 15-day period, the Regional Director will make available for public inspection, during business hours, the aggregate data upon which an adjustment was based.

(D) If written comments are received during any such 15-day period which oppose or protest a notice of bycatch issued under this section, the Secretary will reconsider the necessity for the adjustment and, as soon as practicable after that reconsideration, will either:

(1) Publish in the **Federal Register** a notice of continued effectiveness of the notice of bycatch responding to comments received; or

(2) Modify or rescind the notice.

(E) Notices issued by the Secretary under paragraph (c)(2)(i) of this section will include the following information:

(1) A description of the notice;

(2) The reasons for and the determinations required under paragraph (c)(2) of this section; and

(3) The effective date and any termination date of such notice. If no termination date is specified, the notice will terminate on the last day of the fishing year.

* * * * *

§ 672.22 [Amended]

3. In § 672.22, remove the periods and add "; or" after paragraphs (a)(2)(i)(B) and (a)(2)(ii)(C).

4. In § 672.22, paragraphs (a)(2)(i)(C) and (a)(2)(ii)(D) are added as follows:

§ 672.22 Inseason adjustments.

(a) * * *

(2) * * *

(i) * * *

(C) The underharvest of a TAC or gear share of a TAC for any groundfish species when catch information indicates that the TAC or gear share has not been reached.

(ii) * * *

(D) Reopening of a management area or season to achieve the TAC or gear share of a TAC for any of the target species or the "other species" category.

* * * * *

5. Section 672.23 is revised to read as follows:

§ 672.23 Seasons.

(a) Fishing for groundfish in the regulatory areas and districts of the Gulf of Alaska is authorized from 00:01 a.m. Alaska local time, January 1, through 12:00 midnight Alaska local time, December 31, subject to other provisions of this part, except as provided in paragraphs (b) and (c) of this section.

(b) The time of all openings and closures of fishing seasons other than the beginning and end of the calendar fishing year is 12:00 noon Alaska local time.

(c) Directed fishing for sablefish with hook-and-line gear in the regulatory areas and districts of the Gulf of Alaska is authorized from April 1 through December 31, subject to the other provisions of this part.

6. In § 672.24, paragraph (a) is revised to read as follows:

§ 672.24 Gear limitations.

(a) *Marking of gear.* (1) All longline marker buoys carried aboard or used by any vessel regulated under this part shall be marked with at least one of the following:

(i) The vessel's name; and

(ii) The vessel's Federal permit number; or

(iii) The vessel's registration number.

(2) Markings shall be in characters at least four inches in height and one-half inch in width in a contrasting color visible above the water line and shall be maintained in good condition.

* * * * *

PART 675—GROUNDFISH OF THE BERING SEA AND THE ALEUTIAN ISLANDS AREA

§ 675.20 [Amended]

7. In § 675.20, remove the periods and add "; or" after paragraphs (e)(2)(ii) and (e)(3)(iii).

8. In § 675.20, paragraphs (e)(2)(iii) and (e)(3)(iv) are added to read as follows:

§ 675.20 General limitations.

(e) * * *

(2) * * *

(iii) The underharvest of a TAC or gear share of a TAC for any groundfish species when catch information indicates that the TAC has not been reached.

(3) * * *

(iv) Reopening of a management area or season to achieve the TAC or gear share of a TAC for any of the target species or the "other species" category.

* * * * *

9. Section 675.23 is revised to read as follows:

§ 675.23 Seasons.

(a) Fishing for groundfish in the subareas and statistical areas of the Bering Sea and Aleutian Islands is authorized from 00:01 a.m. on January 1 through 12:00 midnight Alaska local time, December 31, subject to other provisions of this part, except as provided in paragraph (b) of this section.

(b) The time of all openings and closures of fishing seasons other than the beginning and end of the calendar fishing year is 12:00 noon Alaska local time.

10. In § 675.24, paragraph (d) and paragraph (e) are added to read as follows:

§ 675.24 Gear limitations.

* * * * *

(d) *Marking of gear.* All longline marker buoys carried aboard or used by vessels regulated under this part shall be marked with at least one of the following:

(1) The vessel's name; and

(2) The vessel's Federal permit number; or

(3) The vessel's registration number.

(e) Marking shall be in characters at least four inches in height and one-half inch in width in a contrasting color visible above the water line and shall be maintained in good condition.

[FR Doc. 89-30365 Filed 12-27-89; 3:15 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 1
Tuesday, January 2, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

West Virginia Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; Reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing the receipt of revisions to a previously proposed amendment to the West Virginia permanent regulatory program (hereinafter referred to as the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). In accordance with 30 CFR 732.17(h), OSM is reopening the comment period to allow the public sufficient time to consider and comment on modifications submitted by West Virginia on December 19, 1989, to an amendment which was initially submitted by the State on April 26, 1989. The amendment is in response to OSM's issue letter of October 12, 1989, and is intended to make the requirements of West Virginia's program no less effective than the Federal program. The amendment contains modifications relating to permitting, haulroads, drainage and sediment control systems, blasting, fish and wildlife, revegetation, prime farmlands, insurance and bonding, coal exploration, signs, topsoil, hydrologic balance, steep slope mining, auger mining, inactive status, variances from approximate original contour, excess spoil disposal, backfilling and regrading, subsidence control, small operator assistance program, citizen's actions, designating areas unsuitable for mining, inspection and enforcement and coal refuse.

This notice sets forth the times and locations that the West Virginia program and the revised proposed amendment to that program are available for public inspection and the reopened comment period during which interested persons may submit additional written comments on the revised proposed amendment.

DATES: Written comments must be received on or before 4 p.m. on February 1, 1990.

ADDRESSES: Written comments should be mailed or hand delivered to the Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, attention: West Virginia Administrative Record, 603 Morris Street, Charleston, West Virginia 25301.

Copies of the revised proposed amendment, the initial amendment, the West Virginia program, and the administrative record on the West Virginia program are available for public review and copying at the OSM offices and the office of the State regulatory authority listed below, Monday through Friday, 9 a.m. to 4 p.m., excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301, telephone: (304) 347–7158

West Virginia Department of Energy, 1615 Washington Street, East, Charleston, West Virginia 25311, telephone: (304) 348–3500

In addition, copies of the revised proposed amendment are available for inspection during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, room 229, Morgantown, West Virginia 26505, telephone: (304) 291–4004

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 101 Harper Park Drive, Beckley, West Virginia 25801, telephone: (304) 255–5265

Each requester may receive, free of charge, one single copy of the revised proposed amendment by contacting the OSM Charleston Field Office listed above.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Blankenship, Jr., Director, Charleston Field Office; Office of Surface Mining Reclamation and Enforcement; 603 Morris Street; Charleston, West Virginia 25301; telephone (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

On January 21, 1981, the Secretary of the Interior conditionally approved the West Virginia program. Information concerning the general background of the permanent program submission, as well as the Secretary's findings, the disposition of comments and explanation of the initial conditions of approval of the West Virginia program can be found in the January 21, 1981, **Federal Register** (46 FR 5915–5956). Subsequent actions concerning proposed amendments and the conditions of approval are codified at 30 CFR 948.11, 948.12, 948.13, 948 15, and 948.16.

II. Discussion of Proposed Amendment

On August 19, 1986, June 9, 1987, and November 9, 1988, OSM formally notified West Virginia of deficiencies identified in its approved program as a result of Federal rule changes. These letters are commonly referred to as Regulatory Reform I, Historic Preservation and Regulatory Reform II, respectively. In an attempt to address OSM's concerns, the West Virginia Department of Energy (DOE) submitted proposed surface mining reclamation regulations to the West Virginia Legislature for consideration during the 1989 regular session. On April 8, 1989, the West Virginia Legislature adopted DOE's proposed legislative rules with approximately fifty-four revisions. The Governor signed Senate Bill 341 authorizing the finalization of DOE's surface mining reclamation regulations on April 26, 1989. On the same date, DOE formally submitted its legislative rules as a proposed program amendment (Administrative Record No. WV 775).

On May 11, 1989, OSM notified DOE of seventeen more deficiencies in its approved program concerning ownership and control.

On May 26, 1989, OSM published a notice in the **Federal Register** soliciting public comments on DOE's revised surface mining reclamation regulations to determine whether they were no less effective than the Federal regulations and no less stringent than SMCRA. The public comment period closed on June 26, 1989 (54 FR 22783–22785). At the

request of the National Wildlife Federation, on June 26, 1989, OSM extended the comment period through July 11, 1989 (Administrative Record No. WV 795).

On September 20, 1989, OSM informally notified DOE of thirty-three additional deficiencies in its program as a result of Federal rule changes since June 8, 1988.

After completing its review of the State's proposed amendment of April 26, 1989, OSM notified DOE that there were several areas in which the proposed amendment appeared to be inconsistent with the Federal requirements. OSM provided the State its list of concerns on October 12, 1989, which included all relevant public comments received on the proposed amendment and all remaining unresolved issues identified in OSM's Regulatory Reform I letter of August 19, 1986, as revised on December 18, 1987, Historic Preservation letter of June 9, 1987, Regulatory Reform II letter of November 9, 1988. Ownership and Control letter of May 11, 1989, and proposed Regulatory Reform III letter of September 20, 1989. Because the State indicated a willingness to revise its proposed amendment, OSM gave DOE until November 13, 1989, to submit additional modifications or clarifying materials to satisfy all remaining deficiencies. OSM requested that the State promulgate these revisions as emergency rules (Administrative Record No. WV 799).

On October 24, 1989, OSM and State officials met to discuss the status of the State's program. On November 7, 1989, DOE was advised that promulgation of its revised regulations on an emergency basis would not be necessary so long as DOE submitted them to the West Virginia Legislature in January 1990 for ratification (Administrative Record No. WV 801).

In response to concerns raised by Congressman Rahall, on November 9, 1989, OSM extended the State's program amendment submission deadline to December 10, 1989 (Administrative Record Nos. WV 802 and WV 805).

On December 7, 1989, DOE submitted revisions to its initial program amendment of April 26, 1989, in response to OSM's issue letter of October 12, 1989 (Administrative Record No. WV 806). OSM identified several unresolved issues as a result of an informal review of the revised proposed amendment. On December 12 and 13, 1989, OSM and State officials met to discuss the remaining issues. Since the State had only received informal notification of the proposed Regulatory Reform III issues, OSM advised the State that those issues would not have to be addressed in the current submission. However, OSM encouraged the State to continue developing a package for submission to the West Virginia Legislature that would address all program deficiencies, including Regulatory Reform III. As a result of the meetings, State officials agreed to make additional revisions to the December 7th submission.

On December 19, 1989, DOE submitted a revised program amendment which is intended to satisfy all remaining program deficiencies, except Regulatory Reform III issues (Administrative Record No. WV 807). The proposed amendment is a revision to its April 26, 1989, amendment which constituted a major reform to the State's regulatory program and was intended to satisfy five of the remaining six conditions of program approval concerning augering, coal refuse disposal, applicant violator information, coal exploration, revegetation and show cause orders. The revised proposed amendment contains modifications concerning definitions, permit application requirements, advertisement, maps, operation plan, existing structures, in situ mining, subsidence control plan, coal reprocessing, fish and wildlife resources, historic places and archeological sites, prohibitions and limitations on mining, hydrologic information, transfer assignment and sale of permit rights, permit renewals, permit revisions, incidental boundary revisions, variances, permit findings and conditions, improvidently issued permits, haulroads, drainage and sediment control systems, intermittent or perennial streams, design and construction of sediment control systems, certification, blasting plan, blasting record, blasting procedures, waivers, certified blasters, preblast survey, premining and postmining land use, alternative postmining land use, protection of fish and wildlife, standards for evaluating vegetative cover, prime farmlands, insurance and performance bonds, whole life insurance policies posted as collateral bonds, bond adjustments, bond forfeitures, prospecting for less than or greater than 250 tons of coal, signs and markers, casing and sealing of boreholes and underground openings, topsoil, hydrologic balance, water monitoring, steep slope mining, augering operations, inactive status, disposal of excess spoil, backfilling and regrading previously mined areas, underground mining, in situ processing, subsidence control, small operator assistance program, citizen's request for inspections, review of decisions not to inspect or enforce, public record, designating areas unsuitable for mining, inspection frequencies, notice of violations, cessation orders, show cause orders, civil penalty determinations, civil penalty assessment procedures, assessment rates, coal refuse disposal permitting requirements, performance standards for coal refuse disposal sites, performance standards for coal refuse removal operations, and inspection and examination requirements for coal refuse disposal operations.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is reopening the comment period on West Virginia's revised program amendment to provide the public an opportunity to reconsider the adequacy of the revisions. Specifically, OSM is seeking comments on DOE's revised surface mine reclamation regulations, Title 38, Series 2, that were submitted on December 19, 1989 (Administrative Record No. WV 807). OSM is seeking comments on whether the revised proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If approved, the amendment will become part of the West Virginia permanent regulatory program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the OSM Charleston Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

List of Subjects in 30 CFR Part 948

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: December 21, 1989.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 89-30379 Filed 12-29-89; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 81

[FRL-3701-6]

Designation of Air Quality Control Regions—Louisiana; Shreveport Urban Area Redesignation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes to approve the request by the Governor of Louisiana to redesignate the air quality status for the Shreveport urban area, composed of Bossier and Caddo Parishes, from nonattainment to attainment for the national ambient air quality standard (NAAQS) for ozone. This action is proposed pursuant to section 107(d)(5) of the Clean Air Act.

DATES: Comments on this proposal must be received on or before February 1, 1990.

ADDRESSES: Comments should be submitted to Mr. Thomas H. Diggs, Chief, SIP/New Source Section, at the address given below for Region 6. Copies of the State's submittal and other relevant documents are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Mail Code 6T–AN, Dallas, TX. 75202–2733.

Louisiana Department of Environmental Quality, Air Quality Division, 625 North 4th Street, 8th Floor, Baton Rouge, LA 70804–4096.

If you plan to visit any of these offices, please contact the person named below to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Barbara Durso, (214) 655–7214 or FTS 255–7214.

SUPPLEMENTARY INFORMATION: The Shreveport nonattainment area, composed of Bossier and Caddo Parishes, is in northwest Louisiana. EPA published a final rule on September 11, 1978, that designated the area "nonattainment" for the ozone NAAQS.[1] Based on the criteria set by EPA in a series of policy statements, the State of Louisiana can now demonstrate attainment of the ozone NAAQS in both parishes and is seeking to redesignate the parishes' air quality status for that pollutant.

In an October 8, 1985, memorandum to the Air Division Directors of the ten regional EPA offices, Darryl D. Tyler, then Director of Control Programs Development Division, noted that the EPA redesignation policy for ozone is composed of two parts: Sufficient measured data and evidence that "real and enforceable emission reductions have caused the improvement in air quality."

To satisfy the need for sufficient measured data, the State must show that "the expected number of days per calendar year with maximum hourly average concentrations above 0.12 parts per million (235 $\mu g/m^3$) is equal to or less than 1, as determined at [40 CFR part 50] Appendix H."[2] (This expected number of days is also known as the "expected number of exceedances.")

EPA requires that the expected number of exceedances be averaged over the most recent three years of monitored data. Furthermore, the data set for one year must be 75 percent complete for the ozone season, that time of year when the meteorology might be conducive to an exceedance. For Louisiana, the ozone season is a calendar year from January through December.[3] Since 1982, Louisiana has had at least 90 percent data capture at both ozone monitoring sites in the Shreveport area (sites 192740008F01 and 190500001F01). During the most recent three years of monitoring, there have been no readings above 0.12 ppm; therefore, the expected number of exceedances averaged over the most recent three years of data is zero.[4]

The second criterion is to show that the improvement in air quality is a result of "real and enforceable reductions" of emissions. The State must show that the area is covered by a fully approved State Implementation Plan (SIP), which means that the SIP has undergone final, unconditional rulemaking in the **Federal Register** and contains the appropriate measures for the type of area involved, in this case, a 1979 SIP call area. The State must also show that all sources are in compliance with the applicable regulations or on an enforceable compliance schedule.[5]

Because Shreveport is an urban area originally designated nonattainment in 1978, EPA requires that the State implement reasonably available control technology (RACT) for certain industrial categories, i.e., Sets I and II Control Techniques Guidance (CTG) sources in the parishes.[6] The 1979 Louisiana ozone SIP, which EPA approved, meets this requirement.[7]

The State also shows that all these sources were in compliance with the applicable RACT regulations as of October 8, 1988, and that permits issued since 1982 to implement RACT show real, enforceable reductions of volatile organic compounds (VOCs), a precursor to ozone formation, in the Shreveport area. Total emissions are down by 1045 tons of VOCs per year in Shreveport based on permit actions alone.

It should be noted, however, that EPA had alleged that a major source, the topcoating line of a General Motors (GM) light duty truck assembly plant was violating Louisiana Air Quality Regulation 22.9.2(f), a regulation the State adopted in 1979 to provide a supplemental means of enforcing the Lowest Achievable Emission Rate (LAER) as established in the preconstruction permit issued to GM in 1977.[8] Recently Region 6 negotiated a compliance agreement with GM to resolve this problem. The decree is dated October 6, 1989, and is being lodged with the U.S. District Court for the Western Division of Louisiana, Shreveport Division. Once this decree is signed by all parties, it will satisfy the requirement for an enforceable compliance agreement and will allow final approval of the request to redesignate the Shreveport ozone nonattainment area.

The State of Louisiana and EPA are confident that this redesignation will not lead to a degradation of air quality in the area, because the State already has in place more than the minimum controls required by EPA. For example, the State has enacted an automotive inspection and maintenance program with two components to limit excessive automobile emissions in both Bossier and Caddo parishes. One component detects whether leaded fuel has been used in a vehicle designed for unleaded fuel only, and the other detects whether the vehicle emissions control equipment is intact.

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[1] See 43 FR 40425.

[2] 40 CFR 50.9(a).

[3] 40 CFR part 58, appendix D.

[4] Ozone values are read to three decimal places and then rounded to the nearest one-hundredth of a part per million (ppm). Any reading from 0.124 ppm to 0.115 is rounded to 0.12 ppm. Only 5 hourly averages recorded from 1984 through 1988 fell between 0.124 and 0.115, and the highest reading was an hourly average of 0.122 ppm, which occurred in 1985 in Bossier Parish.

[5] See Attachment, page 1, of the April 6, 1987, memorandum from Gerald Emison, Director, Office of Air Quality Planning and Standards, to the regional Air Division Directors.

[6] CTGs are documents that identify methods of controlling emissions from various types of industrial sources. Sets I and II CTGs cover 17 sources of emissions including petroleum refineries, surface coaters, and metal degreasers.

[7] See 45 FR 9909, February 14, 1980, and 47 FR 6015, February 10, 1982. Part of this approval required that the States adopt regulations that would implement any CTGs published after January 1978. Later, in a memorandum dated June 15, 1984, from Darryl Tyler, then Director of EPA's Control Programs Development Division, to the regional Air Division Directors, EPA noted that it would not ask States to implement the so-called Set III CTGs in areas that did not receive a SIP call for failure to demonstrate attainment of the ozone standard by December 31, 1982. EPA reasoned that if a SIP was not substantially inadequate to demonstrate attainment by that date, then the SIP did not need to be revised to add more control methods.

[8] See 54 FR 3085, January 23, 1989.

Because ozone SIPs are designed to satisfy the requirements of Part D of the Clean Air Act (the Act) and to provide for attainment and maintenance of the ozone NAAQS, today's proposal to redesignate should not be interpreted as authorizing the State to delete, alter, or rescind any of the VOC emission limitations and restrictions contained in the approved ozone SIP. Changes to ozone SIP VOC regulations that render them less stringent than those contained in the EPA-approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation under section 173(4) of the Act and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the Act.

Proposed Action:

Today's notice proposes to approve the redesignation of the Shreveport, Louisiana, urban area from nonattainment to attainment for the ozone NAAQS.

Under 5 U.S.C. 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under Executive Order 12291, this action is not "Major." It does not need to be submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 81

Air pollution control.

Authority: 42 U.S.C. 7401–7642.

Dated: July 11, 1989.

Robert E. Layton, Jr.,

Regional Administrator (6A).

[FR Doc. 89–30350 Filed 12–29–89; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. MC 105]

49 CFR Part 392

RIN 2125–AA36

Railroad Grade Crossings

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Withdrawal of advance notice of proposed rulemaking (ANPRM).

SUMMARY: The FHWA is withdrawing an ANPRM issued on November 18, 1982, 47 FR 51904, and closing docket No. MC–105. The rulemaking, issued in response to safety recommendations of the National Transportation Safety Board (NTSB) and changes to the Uniform Vehicle Code (UVC), sought comments on whether the FHWA should retain the current rule requiring certain motor carrier vehicles to stop at railroad grade crossings. The data and information received during the comment period and research initiated by the FHWA indicate that continuation of the current rule will best serve the interests of safety.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Office of Motor Carrier Standards, (202) 366–2983, or Thomas P. Holian, Office of the Chief Counsel, (202) 366–2981, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On November 18, 1982, the FHWA published an ANPRM in the **Federal Register** (47 FR 51904) seeking public comment concerning whether the current section requiring certain commercial motor vehicles to stop at railroad grade crossings should be changed or retained. In particular, the FHWA sought to determine whether vehicles should be required to stop at crossings equipped with active warning devices. The National Committee on Uniform Traffic Laws and Ordinances (NCUTLO) had modified its requirement in the UVC so that vehicles would no longer be required to stop at crossings equipped with active warning devices. Further, the NTSB had recommended to the FHWA that § 392.10 be amended to no longer require vehicles to stop at railroad grade crossings equipped with active warning devices. Both the NCUTLO and the NTSB suggested three factors that outweighed the benefit of the reduced probability that a vehicle which stops at a grade crossing will collide with a train which its driver will not see. The three factors were the risk from rear end collisions with the stopped vehicle, the added risk of collision with a train because a vehicle starting from a stop will take longer to clear a grade crossing than one that keeps moving, and the added delay and fuel costs.

The overwhelming majority of private sector commenters favored retaining the current regulation. Thirty-three private sector commenters favored the current regulation compared to only 2 which favored amending the current rule. The most ardent supporters of the current rule were train crews, even though the current rule was also supported by motor carriers, drivers, shippers and railroads. A narrower, but still substantial, majority of State commenters were also in favor of retaining the rule. Nine favored retaining the rule compared to 4 which favored amending the rule. Also in favor of amending the rule were the National Transportation Safety Board, the National Safety Council and one municipality, the City of Madison, Wisconsin.

The main arguments in favor of amending the rule are the ones suggested above by the NTSB and the NCUTLO, plus an argument that the FHWA should adopt a rule compatible with the UVC in order to promote uniformity. The main argument against amending the rule was that the current rule enhances safety.

In light of the number of states which commented that the FHWA should retain the current rule, the FHWA does not believe that amending its rule will promote uniformity.

We believe that research in this area is inconclusive, and that the opinions of the States are divided. The FHWA also believes that the comments of those actually involved in the transportation industry are unambiguous. Those who would actually be exposed to the costs and benefits of any rule regarding railroad crossings are near unanimous in their belief that all trucks carrying hazardous materials should continue to stop at those grade crossings at which they are now required to stop. The FHWA will continue to review the grade crossing accident data for commercial motor vehicles, but until additional evidence is developed, the FHWA is withdrawing the ANPRM on this subject and is closing Docket MC–105.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 392

Highway safety, Highways and roads, Motor carriers, Drivers, Motor vehicle safety.

(Catalog of Federal Domestic Assistance Program Number 20.217, motor carrier safety)

Issued on: December 21, 1989.

T.D. Larson,

Administrator.

[FR Doc. 89–30355 Filed 12–29–89; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 90927-9273]

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice.

SUMMARY: NOAA issues this notice to inform the public and the fishing industry that the New England Fishery Management Council (Council) is considering action under Amendment 3 to the Northeast Multispecies Fishery Management Plan (FMP). The purpose of the action would be to protect a large concentration of yellowtail flounder that are smaller than the legal minimum landing size but that currently are being caught and wastefully discarded at sea.

DATES: Comments on the proposed action must be received by January 11, 1990.

ADDRESSES: Copies of the NMFS Northeast Regional Director's (Regional Director) fact-finding report and the Council's impact analysis will be available on January 5, 1989, upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01960.

Send comments on the proposed action, the fact-finding report and the Council's impact analysis to Richard B. Roe, Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Jack Terrill (NOAA Fisheries Resource Policy Analyst), 508-281-9252.

SUPPLEMENTARY INFORMATION: This action is taken under 50 CFR 651.26 as established by Amendment 3 to the FMP. Amendment 3 was approved by the Secretary of Commerce on November 24, 1989, and published on December 22, 1989 (54 FR 52803), with the regulations effective on December 19, 1989. Section 651.26 specifies a Flexible Area Action System (FAAS) whereby protection can be provided to concentrations of juvenile, sublegal or spawning fish. As part of this process, the Regional Director will initiate a fact-finding investigation of the alleged discard problem. The Council will also provide an impact analysis of alternative measures that might be implemented under this action.

Both the Regional Director's fact-finding report and the Council's impact analysis will be available by January 5, 1989, at the Council Office (see ADDRESSES). The Council's Multispecies Committee (Committee) will hold a public hearing in Wakefield, Massachusetts, in conjunction with the Council meeting on January 11, 1989, to solicit comments on the proposed action. More specific information is below.

(1) The area of the proposed action is defined by a line drawn between the following points: (a) 40° 43′ N. latitude, 70° 00′ W. longitude; (b) 40° 43′ N. latitude, 68° 59′ W. longitude; (c) 40° 28′ N. latitude, 69° 12′ W. longitude; (d) 40° 28′ N. latitude, 70° 00′ W. longitude; and point (a). The line between points (b) and (c) corresponds to the LORAN-C 5930-Y-31275 bearing.

(2) The principal species that will be affected by any action will be yellowtail flounder, Atlantic cod, summer flounder, winter flounder, windowpane flounder, and Atlantic sea scallops. To a much lesser extent, American plaice, witch flounder, haddock, silver hake, halibut, pollock, angler, Atlantic surf clams, ocean quahogs, *Loligo* squid, American lobster, jonah crabs and red crabs will be affected.

(3) The types of gear that could be affected by this action are all types of gear capable of catching groundfish. These are otter trawls, mid-water trawls, gill nets, scallop dredges and hook-and-line gear, such as tub trawls, longlines, and handlines.

(4) The fisheries that potentially will be impacted are the groundfish and Atlantic sea scallop fisheries in the area of the proposed action and that use the gear types listed above. No recreational fishing takes place in the area in question during the period of the proposed action; no gillnet or mid-water trawl gear was fished in this area in the period January through March in 1988.

(5) Based on 1988 landings data, the principal ports that will be affected are New Bedford, Massachusetts, and Point Judith and Newport, Rhode Island.

(6) The expected duration of the action is from the day the action is implemented, which could be as early as January 16, 1990, until March 1, 1990. This period is expected to be about 75 days.

(7) The type of action that the Committee expects to recommend is a closure of all or part of this area to all of the gear types listed in paragraph (3) above.

(8) The Council will begin analyzing the potential impacts of possible action upon publication of this notice.

(9) The Council's impact analysis will be available on January 5, 1990.

List of Subjects in 50 CFR Part 651

Fishing, Fisheries, Vessel permits and fees.

Dated: December 26, 1989.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-30301 Filed 12-26-89; 4:54 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 55, No. 1
Tuesday, January 2, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

DEPARTMENT OF LABOR

Notice of Determination of the Shortage Number Under Section 210A of the Immigration and Nationality Act

AGENCIES: Office of the Secretary, United States Department of Agriculture; Office of the Secretary, United States Department of Labor.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Secretaries of Agricultural and Labor (the Secretaries) have determined jointly that the number of additional aliens who should be admitted to the United States or who should otherwise acquire the status of aliens lawfully admitted for temporary residence, under section 210A of the Immigration and Nationality Act (INA), to meet a shortage of workers to perform seasonal agricultural services (SAS), during fiscal year (FY) 1990, is zero.

Notice is also given that the Secretaries have calculated jointly the annual numerical limitation on the number of such aliens who should be admitted or who should otherwise acquire the status of aliens lawfully admitted for temporary residence under section 210A of the INA. This annual numerical limitation for FY 1990 is 336,334. This number represents the upper limit on the number of aliens who may be authorized for admission or adjustment of status. The actual number of aliens to be admitted or whose status is to be adjusted for FY 1990 is the "shortage number" announced above.

DATES: This notice is effective during the period October 1, 1989, through September 30, 1990, unless superseded by a subsequent notice.

FOR FURTHER INFORMATION CONTACT: Mr. Gary B. Reed, DOL, Telephone (202) 523-6007, or Mr. Al French, USDA, Telephone (202) 447-4737.

SUPPLEMENTARY INFORMATION: Section 303 of the Immigration Reform and Control Act of 1986 added section 210A to the Immigration and Nationality Act (INA). Section 210A of the INA requires that before the beginning of each FY, starting with FY 1990 and ending with FY 1993, the Secretaries determine jointly, according to a specific statutory formula, the number of additional aliens (if any) who should be admitted to the United States or who should otherwise acquire the status of aliens lawfully admitted for temporary residence to meet a shortage of workers to perform SAS. These aliens are known as replenishment agricultural workers (RAWs) and the number of such workers to be admitted in each FY is known as the "shortage number." The INA further provides that the Attorney General shall provide for the admission of a number of RAWs equal to the shortage number, or, if less, a number of RAWs equal to the annual numerical limitation which is established by a statutory formula contained in section 210A(b) of the INA. Criteria for admission as a RAW are established by the Immigration and Naturalization Service (INS) in regulations located at 8 CFR part 210a. The Secretaries make the calculation of the annual numerical limitation concurrently with their determination of the shortage number. Regulations regarding the procedure used in the determination of the shortage number and the calculation of the annual numerical limitation have been promulgated jointly by the Secretaries. Identical versions of the regulations are published in the **Federal Register** this date, and are to be permanently located at 7 CFR part 1e and 29 CFR part 503.

Because the INS was unable to complete adjudication of all special agricultural worker (SAW) applications by the end of FY 1989, the Secretaries will recalculate the annual numerical limitation prior to the end of each fiscal quarter. This will be done each time by including all those aliens who have been finally adjudicated as SAWs subsequent to any earlier determination of the annual numerical limitation, and by adjusting the number of SAWs who worked in SAS to take into account the increase in the number of reportable workers who obtained SAW status. These quarterly recalculations will continue until the Secretaries are advised by INS and the Director of the Bureau of the Census (the Director) that all applications for SAW status have been finally adjudicated. Thereafter, the annual numerical limitation will be calculated annually for the entire FY.

In recognition of the uncertainties associated with agricultural production, section 210A(a)(7) of the INA contains emergency procedures for adjusting the shortage number. The procedures through which a group or association representing employers or potential employers of individuals who perform SAS may request an emergency increase in the shortage number are set forth in 7 CFR 1e.20 and 29 CFR 503.20. Until the Secretaries are advised by INS and the Director that all applications for SAW status have been finally adjudicated, if an emergency increase in the shortage number is granted pursuant to 7 CFR 1e.20 and 29 CFR 503.20, but additional RAWs would otherwise be barred from entry due to the annual numerical limitation, the Secretaries will recalculate the annual numerical limitation based upon the most recent data available from INS and the Director.

Authority: 8 U.S.C. 1161.

Done at Washington, DC, the 28th day of December 1989.

Roland R. Vautour,

Acting Secretary of Agriculture.

Elizabeth Dole,

Secretary of Labor.

[FR Doc. 89-30389 Filed 12-29-89; 8:45 am]

BILLING CODE 3410-01-M
BILLING CODE 4510-23-M

Determination of the Shortage Number Under Section 210A of the Immigration and Nationality Act

AGENCIES: Office of the Secretary, United States Department of Agriculture; Office of the Secretary, United States Department of Labor.

ACTION: Submission of reporting requirements for clearance under the Paperwork Reduction Act.

SUMMARY: The United States Department of Agriculture (USDA) and the United States Department of Labor (DOL), in carrying out their responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35; 5 CFR part 1320 (53 FR 16618 to 16632, May 10, 1988)), are submitting the reporting requirements of the final rules 7 CFR part 1e (the identical rules are also found at 29 CFR part 503) published in the **Federal Register** on January 2, 1990, to the Office of Management and Budget for that Agency's approval.

DATE: The Secretaries of Agriculture and Labor have requested an expedited review of this submission under the Paperwork Reduction Act, to be completed on or before January 22, 1990.

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding the reporting requirements for those rules should be directed to Paul E. Larson, Departmental Clearance Officer, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210 (telephone (202) 523–6331). Comments should also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

Any member of the public who wants to comment on the information collection clearance package which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

SUPPLEMENTARY INFORMATION: On January 2, 1990 the Secretary of Agriculture and the Secretary of Labor (the Secretaries) published final rules regarding the procedure to be used by the Secretaries in determining the number (if any) of additional aliens who should be admitted to the United States or who should otherwise acquire the status of aliens lawfully admitted for temporary residence, under section 210A of the Immigration and Nationality Act (INA), as added by section 303 of the Immigration Reform and Control Act of 1986 (IRCA), to meet a shortage of workers to perform seasonal agricultural services (SAS). Such aliens are known as replenishment agricultural workers (RAWs). The criteria under which individuals may qualify for RAW status is established by the Immigration and Naturalization Service (INS) in regulations located at 8 CFR part 210a.

Those final rules also establish, in Subpart C, the procedure through which a group or association representing employers in SAS may appeal to the Secretaries for an increase in the shortage number. Further, those final rules, in subpart D, set forth the procedure through which a group of agricultural workers, admitted or adjusted under section 210A of the INA, may petition the Secretaries for a decrease in the number of work-days required in order to maintain their temporary resident alien status. It has been determined that subparts C and D of those rules constitute information collection under the Paperwork Reduction Act. The following submission for approval of the reporting requirements of those rules has been submitted to OMB for expedited approval under the Paperwork Reduction Act.

Signed at Washington, DC, this 28th day of December, 1989.

Paul E. Larson,

Departmental Clearance Officer, Department of Labor.

Larry K. Roberson,

Acting Departmental Clearance Officer, Department of Agriculture.

BILLING CODE 3410–01–M
BILLING CODE 4510–23–N

Standard Form **83**
(Rev. September 1983)

Request for OMB Review

Important

Read instructions before completing form. Do not use the same SF 83 to request both an Executive Order 12291 review and approval under the Paperwork Reduction Act.

Answer all questions in Part I. If this request is for review under E.O. 12291, complete Part II and sign the regulatory certification. If this request is for approval under the Paperwork Reduction Act and 5 CFR 1320, skip Part II, complete Part III and sign the paperwork certification.

Send three copies of this form, the material to be reviewed, and for paperwork—three copies of the supporting statement, to:

Office of Information and Regulatory Affairs
Office of Management and Budget
Attention: Docket Library, Room 3201
Washington, DC 20503

PART I.—Complete This Part for All Requests.

1. Department/agency and Bureau/office originating request

U.S. Department of Labor
Office of the Secretary
Office of the Assistant Secretary for Policy

2. Agency code: 1225

3. Name of person who can best answer questions regarding this request: Gary Reed

Telephone number: (202) 523-6007

4. Title of information collection or rulemaking

Determination of the Shortage Number Under Section 210A of the Immigration and Nationality Act

5. Legal authority for information collection or rule *(cite United States Code, Public Law, or Executive Order)*

8 USC 1161, or

6. Affected public *(check all that apply)*

1 ☒ Individuals or households
2 ☐ State or local governments
3 ☒ Farms
4 ☐ Businesses or other for-profit
5 ☒ Federal agencies or employees
6 ☐ Non-profit institutions
7 ☐ Small businesses or organizations

PART II.—Complete This Part Only if the Request is for OMB Review Under Executive Order 12291

7. Regulation Identifier Number (RIN)

___ ___ ___ ___ — ___ ___ ___ ___, or, None assigned ☐

8. Type of submission *(check one in each category)*

Classification
1 ☐ Major
2 ☐ Nonmajor

Stage of development
1 ☐ Proposed or draft
2 ☐ Final or interim final, with prior proposal
3 ☐ Final or interim final, without prior proposal

Type of review requested
1 ☐ Standard
2 ☐ Pending
3 ☐ Emergency
4 ☐ Statutory or judicial deadline

9. CFR section affected

_____ CFR _____

10. Does this regulation contain reporting or recordkeeping requirements that require OMB approval under the Paperwork Reduction Act and 5 CFR 1320? . . . ☐ Yes ☐ No

11. If a major rule, is there a regulatory impact analysis attached? . . . 1 ☐ Yes 2 ☐ No
If "No," did OMB waive the analysis? . . . 3 ☐ Yes 4 ☐ No

Certification for Regulatory Submissions

In submitting this request for OMB review, the authorized regulatory contact and the program official certify that the requirements of E.O. 12291 and any applicable policy directives have been complied with.

Signature of program official — Date

Signature of authorized regulatory contact — Date

12. *(OMB use only)*

Previous editions obsolete
NSN 7540-00-634-4034

83-108

Standard Form 83 (Rev. 9-83)
Prescribed by OMB
5 CFR 1320 and E.O. 12291

PART III.—Complete This Part Only If the Request Is for Approval of a Collection of Information Under the Paperwork Reduction Act and 5 CFR 1320.

13. Abstract—Describe needs, uses and affected public in 50 words or less 'Agriculture; Aliens; Immigration; Labor; Migrant Worker; Rural labor.' Information needed so the Secretaries of Agriculture and Labor can make a determination on the request by respondents for (1) an emergency increase in the "shortage number," - the basis for admitting additional aliens to work in seasonal agriculture, of (2) a decrease in the work days required of certain aliens to maintain legal status.

14. Type of information collection *(check only one)*

Information collections not contained in rules

1 [X] Regular submission
2 [ ] Emergency submission *(certification attached)*

Information collections contained in rules

3 [ ] Existing regulation *(no change proposed)*
4 [ ] Notice of proposed rulemaking (NPRM)
5 [X] Final, NPRM was previously published
6 Final or interim final without prior NPRM
A [ ] Regular submission
B [ ] Emergency submission *(certification attached)*

7. Enter date of expected or actual Federal Register publication at this stage of rulemaking *(month, day, year)*: 01/04/90

15. Type of review requested *(check only one)*

1 [X] New collection
2 [ ] Revision of a currently approved collection
3 [ ] Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection
4 [ ] Reinstatement of a previously approved collection for which approval has expired
5 [ ] Existing collection in use without an OMB control number

16. Agency report form number(s) *(include standard/optional form number(s))*

17. Annual reporting or disclosure burden

1 Number of respondents	20
2 Number of responses per respondent	1
3 Total annual responses *(line 1 times line 2)*	20
4 Hours per response	8
5 Total hours *(line 3 times line 4)*	160

18. Annual recordkeeping burden

1 Number of recordkeepers	
2 Annual hours per recordkeeper	
3 Total recordkeeping hours *(line 1 times line 2)*	
4 Recordkeeping retention period	years

19. Total annual burden

1 Requested *(line 17-5 plus line 18-3)*	160
2 In current OMB inventory	0
3 Difference *(line 1 less line 2)*	160
Explanation of difference	
4 Program change	160
5 Adjustment	

20. Current *(most recent)* OMB control number or comment number

21. Requested expiration date
January 1992

22. Purpose of information collection *(check as many as apply)*

1 [X] Application for benefits
2 [ ] Program evaluation
3 [ ] General purpose statistics
4 [ ] Regulatory or compliance
5 [ ] Program planning or management
6 [ ] Research
7 [ ] Audit

23. Frequency of recordkeeping or reporting *(check all that apply)*

1 [ ] Recordkeeping
Reporting
2 [X] On occasion
3 [ ] Weekly
4 [ ] Monthly
5 [ ] Quarterly
6 [ ] Semi-annually
7 [ ] Annually
8 [ ] Biennially
9 [ ] Other *(describe)*:

24. Respondents' obligation to comply *(check the strongest obligation that applies)*

1 [ ] Voluntary
2 [X] Required to obtain or retain a benefit
3 [ ] Mandatory

25. Are the respondents primarily educational agencies or institutions or is the primary purpose of the collection related to Federal education programs? [ ] Yes [X] No

26. Does the agency use sampling to select respondents or does the agency recommend or prescribe the use of sampling or statistical analysis by respondents? [ ] Yes [X] No

27. Regulatory authority for the information collection
29 CFR 503 ; or _____ FR _____ ; or, Other *(specify)*: _____

Paperwork Certification

In submitting this request for OMB approval, the agency head, the senior official or an authorized representative, certifies that the requirements of 5 CFR 1320, the Privacy Act, statistical standards or directives, and any other applicable information policy directives have been complied with.

Signature of program official	Date
Signature of agency head, the senior official or an authorized representative	Date
	ES PROS

☆U.S. Government Printing Office: 1985—479-665/39282

BILLING CODE 3410-01-C
BILLING CODE 4510-23-C

Supporting Statement

A. Justification

1. Section 210A(a)(7) of the Immigration and Nationality Act (INA), as added by section 303 of the Immigration Reform and Control Act of 1986 (IRCA), and identical regulations promulgated at 7 CFR part 1e, subpart C, and 29 CFR part 503, subpart C, provide a process through which representatives of employers who use, or may use, special agricultural workers (SAWs) to work in seasonal agricultural services (SAS) may request that the Secretary of Agriculture and the Secretary of Labor (the Secretaries) increase the shortage number. The shortage number is the determination by the Secretaries of the number (if any) of additional aliens who should be admitted to the United States or who should otherwise acquire the status of aliens lawfully admitted for temporary residence under the INA to meet a shortage of workers to perform SAS. The statute and regulations set forth the information that requesters must show in making their request, and further require that the Secretaries in making their request, and further require that the Secretaries in making their determination take into consideration reasonable recruitment efforts undertaken.

Section 210A(a)(8) of the INA, as added by section 303 of the IRCA, and identical regulations promulgated at 7 CFR part 1e, subpart D, and 29 CFR part 503, subpart D, provide a process through which groups of replenishment agricultural workers (RAWs) may request that the Secretaries decrease the number of work-days of SAS they must perform in order to maintain their legal status in the United States. The statute and regulations set forth the information that requesters must show in making their request.

2. The information collected will be used by the Secretaries in making their determination on the request. The information will also be used to prepare a **Federal Register** notice, as required by the above sections of the INA and regulations, to advise the public that such requests have been received. Failure to collect the information, which the statute requires requesters to provide, would leave the Secretaries with insufficient basis for making their determination. Indeed, without this information the Secretaries would be unaware of the need for a determination.

3. There are no sources of improved technology which can be used to reduce the reporting burden.

4. There is no duplication of existing information collections.

5. No similar information is available from any other source.

6. The legislative history of IRCA (H. Report 99–682, p. 87) indicates that Congress did not intend the emergency procedures to be utilized for localized, short-term problems that individual farmers may have in locating workers. The procedures require action by groups or farmers, or groups of workers, and the information required is the minimum necessary for the Secretaries to make informed determinations regarding requests for adjustment in the numbers.

7. Each request to the Secretaries will be distinct from all others. The geographical area of the Nation from which received, the crops involved, the weather or other unexpected circumstances causing the request, and the make-up of the SAS workforce in the area, are examples of the kinds of variables. Information received relative to one such request will not be appropriate for making a determination on a different request. The information must be collected specifically for each request in order to provide a basis for an appropriate determination.

8. This information collection is conducted in a manner consistent with the guidelines in 5 CFR 1320.6.

9. The regulations which establish this information collection have been promulgated jointly by the Departments of Agriculture and Labor. In addition, consultations were held on a regular basis with the Director of the Center for Demographic Studies at the Bureau of the Census, and with the Deputy Assistant Commissioner, Special Agricultural Worker Programs, at INS. Proposed regulations were published in the **Federal Register** on August 11, 1989, for notice and public comment. Comments received regarding the information collection are addressed in the preamble to the final rule.

10. There are no assurances of confidentiality. The statute and regulations require that the Secretaries publish a notice in the **Federal Register** of the substance of each request.

11. There are no questions of a sensitive nature.

12. No specific form, nor format, is established for submitting this information. There are no Federal costs associated with this reporting.

13. Representatives of major employer associations and of worker advocates provided comments regarding information required of requesters in the proposed rule. Those comments, as well as consultations among the agencies identified in item 9, suggest only modest utilization of the emergency procedures. The Secretaries estimate that twenty (20) such requests may be received in fiscal year. Any such request, however, will require detailed information in order to provide the Secretaries with sufficient information upon which to make a determination and on average it is estimated that such a request will require 8 hours of preparation, including time for reviewing the regulation, searching data sources, gathering and maintaining data, and preparing the request. Total annual burden is estimated to be 160 hours. This collection burden was not included in the agency's Information Collection Budget (ICB) because the regulation was not in place at the time the ICB was prepared.

14. The increase in the burden hours is the result of a new requirement established by enactment of IRCA, and the promulgation of new regulations to implement the statute.

15. The information collected will not be published for statistical use.

[FR Doc. 89–30388 Filed 12–29–89; 8:45 am]

BILLING CODE 3410–01–M
BILLING CODE 4510–23–M

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Request for Designation Applicants To Provide Official Services in the Geographic Areas Currently Assigned to the Barton (KY) and North Dakota (ND) Agencies

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agencies. The official agencies are J.W. Barton Grain Inspection Service, Inc. (Barton) and North Dakota Grain Inspection Service, Inc. (North Dakota).

DATE: Applications must be postmarked on or before February 1, 1990.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647, South Building, P.O. Box 96454, Washington, DC 20090–6454. All applications received will be

made available for public inspection at this address located at 1400 Independence Avenue SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Barton, located at 1506 Triplett Street, Owensboro, KY, 42302, and North Dakota, located at 1601 Seventh Avenue North, Fargo, ND, 58102 were designated under the Act on July 1, 1987, as official agencies, to provide official inspection services.

The designation of each of these official agencies terminates on June 30, 1990. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Barton, in the States of Indiana and Kentucky, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

In Indiana: Perry and Spencer Counties.

In Kentucky:

Bounded on the North by the northern Daviess and Hancock County lines;

Bounded on the East by the eastern Hancock, Ohio, and Muhlenberg County lines;

Bounded on the South by the Muhlenberg County line west to the Western Kentucky Parkway; the Western Kentucky Parkway west to State Route 109; and

Bounded on the West by State Route 109 north to State Route 814; State Route 814 north to U.S. Route Alternate 41; U.S. Route Alternate 41 north to the Webster County line; the northern Webster County line; the western McLean and Daviess County lines.

The geographic area presently assigned to North Dakota, in the State of North Dakota, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by the northern Steele County line from State Route 32 east; the eastern Steele County line south to State Route 200; State Route 200 east-southeast to the State line;

Bounded on the East by the eastern North Dakota State line;

Bounded on the south by the southern North Dakota State line west to State Route 1; and

Bounded on the West by State Route 1 north to Interstate 94; Interstate 94 east to the Soo Railroad line; the Soo Railroad line northwest to State Route 1; State Route 1 north to State Route 200; State Route 200 east to State Route 45; State Route 45 north to State Route 32; State Route 32 north.

Exceptions to North Dakota's assigned geographic area are the following locations inside North Dakota's area which have been and will continue to be serviced by the following official agency:

Grain Inspection, Inc.: Norway Spur, and Oakes Grain, both in Oakes, Dickey County.

Interested parties, including Barton and North Dakota, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic areas, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas are for the period beginning July 1, 1990, and ending June 30, 1993. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. *71 et seq.*).

Dated: December 20, 1989.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 89–30008 Filed 12–29–89; 8:45 am]

BILLING CODE 3410–EN–M

Request for Comments on the Designation Applicants in the Geographic Area Currently Assigned to the Chattanooga, TN Agency

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicant for official agency designation in the geographic area currently assigned to Chattanooga Grain Inspection Company, Inc. (Chattanooga).

DATE: Comments must be postmarked on or before February 16, 1990.

ADDRESS: Comments must be submitted in writing to Paul Marsden, RM, FGIS, USDA, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090–6454.

Telemail users may respond to [PMARSDEN/FGIS/USDA] telemail.

Telex users may respond as follows:

TO: Paul Marsden
TLX:7607351, ANS:FGIS UC.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Paul Marsden, telephone (202) 475–3428.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified geographic areas in the November 1, 1989, **Federal Register** (54 FR 46095). Applications were to be postmarked by December 1, 1989. Chattanooga was the only applicant for designation in its area, and applied for the entire area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the applicant for designation. Commenters are encouraged to submit reasons for support or objection to this designation action and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicant will be informed of the decision in writing.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: December 20, 1989.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 89–30009 Filed 12–29–89; 8:45am]

BILLING CODE 3410–EN–M

Designation of the Farwell (TX) Agency

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation of Farwell Grain Inspection, Incorporated, as an official agency responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: February 1, 1990.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that the designation of William D. Prince dba Farwell Grain Inspection Company terminates on January 31, 1990, and requested applications for official agency designation to provide official services within specified geographic area in the August 1, 1989, **Federal Register** (54 FR 31712). Applications were to be postmarked by August 31, 1989. W.D. Prince and Glena Prince proposing to establish a new corporation, Farwell Grain Inspection, Incorporated, was the only applicant and applied for designation in the entire area currently assigned to Farwell Grain Inspection Co. The Service announced the applicant name in the October 4, 1989, **Federal Register** (54 FR 40901) and requested comments on the applicant for designation. Comments were to be postmarked by November 20, 1989. No comments were received.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and in accordance with section 7(f)(1)(B), determined that Farwell Grain Inspection, Incorporated is able to provide official services in the geographic areas for which the Service is granting the designation. Effective February 1, 1990, and terminating January 31, 1993, Farwell Grain Inspection, Incorporated is designated to provide official inspection services in their specified geographic area as previously described in the August 1 **Federal Register**.

Interested persons may obtain official services by contacting the agency at the following telephone number: Farwell at (806) 481–9052.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: December 20, 1989.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 89–30007 Filed 12–29–89; 8:45 am]

BILLING CODE 3410–EN–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–602]

Certain Forged Steel Crankshafts From the United Kingdom; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On September 29, 1989, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on certain forged steel crankshafts from the United Kingdom. The review covers United Engineering & Forging (UEF), the only known manufacturer and/or exporter of this merchandise to the United States, and the period May 13, 1987 through August 31, 1988.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the final results from those presented in the preliminary results of review.

EFECTIVE DATE: January 2, 1990.

FOR FURTHER INFORMATION CONTACT: J. David Dirstine or Richard Rimlinger, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–1131.

SUPPLEMENTARY INFORMATION:

Background

On September 29, 1989, the Department published in the **Federal Register** (54 FR 40154) the preliminary results of its administrative review of the antidumping duty order on certain forged steel crankshafts from the United Kingdom (52 FR 35467, September 21, 1987). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act) and 19 CFR 353.22 (1989).

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS number(s).

Imports covered by this review are shipments of forged carbon or alloy steel crankshafts with a shipping weight between 40 and 750 pounds, whether machined or unmachined. During the period, such merchandise was classifiable under items 660.6713, 660.6727, 660.7113, 660.7127 and 660.7147 of the *Tariff Schedules of the United States Annotated* (TSUSA). This merchandise is currently classifiable under the HTS items 8483.10.10 and 8483.10.30. The HTS and TSUSA item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers UEF, the only known manufacturer, and/or exporter of certain forged steel crankshafts from the United Kingdom to the United States, and the period May 13, 1987 through August 31, 1988.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the respondent, UEF.

Comment 1:

The respondent contends that the difference in merchandise adjustment values were transposed in the margin calculation.

Department's Position:

We agree and have corrected the margin calculation.

Comment 2:

The respondent advises that a volume purchase rebate, which UEF agreed to pay one home market customer, was never actually paid.

Department's Position:

We have revised our foreign market value calculation to eliminate the rebate adjustment.

Comment 3:

Respondent argues for a circumstance of sale adjustment in the case of sales involving two die numbers to account for tooling and manufacturing costs that are not included in the U.S. sales invoice, but billed separately to the customer.

Department's Position:

After reviewing the information that has been presented, we have determined that these costs should be considered as part of the gross selling price because, although separately billed, they were clearly a component of that price. We have accepted UEF's method of calculating unit tooling and manufacturing costs for crankshafts produced from the two dies and have revised our calculations accordingly.

Comment 4:

Respondent argues that U.S. interest rates should be used in determining the cost of credit for U.S. sales, because the U.S. rate would reflect the actual credit costs incurred by UEF had the company borrowed to finance its U.S. receivables.

Department's Position:

We disagree. The Department uses the home market interest rate to compute the respondent's credit expense for U.S. purchase price sales, where, as in the present review, the respondent has not received any foreign financing. *See, e.g., Porcelain-on-Steel Cooking Ware from Mexico,* 54 FR 36435 (October 10, 1986).

Comment 5:

Respondent argues that sales volume and end use of the downstream product should also be used as criteria in the selection of comparison models.

Department's Position:

We disagree. We do not consider end use and sales volume to be factors in the selection of similar merchandise in this case. Under section 771(16) of the Tariff Act, which defines "such or similar" merchandise, end use is a factor only when the end use pertains to the merchandise under review, not to the product into which the merchandise is incorporated.

In this case, the subject crankshafts and proposed comparison models have the same end use, *i.e.*, they are both incorporated into engines. To the extent that the end use of the engine is manifested in the characteristics of the crankshaft, the criterion of engine end use is already accounted for in our comparisons. As for sales volume, the definition of such or similar merchandise under section 771(16) does not specify sales volume as a criterion for choosing the most similar merchandise. Therefore, we have not considered sales volume in making our selection of most similar merchandise.

Final Results of the Review

Based on our analysis, we have revised our preliminary results for UEF from a weighted-average margin of 2.19 percent to 2.08 percent for the period May 13, 1987 through August 31, 1988.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

As provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 2.08 percent shall be required for UEF. For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after August 31, 1988 and who is unrelated to the reviewed firm, a cash deposit of 2.08 percent shall be required These cash deposit requirements are effective for all shipments of forged carbon or alloy steel crankshafts, whether machined or unmachined, from the United Kingdom, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and will remain in effect until the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22 (1989).

Dated: December 26, 1989.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-30381 Filed 12-29-89; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Douglas J. Aller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. .4001-2l) (The Act) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination of whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1223H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 89-00018." A summary of the application follows.

Summary of the Application

Applicant: Outdoor Power Equipment Institute, Inc. ("OPEI"), 341 South Patrick Street, Alexandria, Virginia 22314. Contact: Laurence J. Lasoff, Esquire, Legal Counsel, Telephone: 202/342-8530.

Application No.: 89-00018.

Date Deemed Submitted: December 18, 1989.

Members (in addition to the applicant): See Appendix A.

Export Trade:

1. *Products*

Products of the outdoor power equipment industry intended for use in lawn, garden, and turf care

maintenance, including walk-behind mowers, riding rotary turf mowers, walk-behind snowthrowers, walk-behind rotary tillers, lawn tractors, yard tractors, garden tractors, riding mowers, flexible line trimmers, edger/trimmers, shredder/grinders, leaf blowers, lawn vacuums, sprayers, power rakes, thatchers, chippers, stump cutters, log splitters, commercial turf care equipment, and attachments for the above riding equipment.

2. *Services*

Engineering, design, and related services related to Products and to turn-key contracts that incorporate Products; servicing of Products; and training with respect to the safe use and maintenance of Products.

3. *Technology Rights*

Patents, trademarks, service marks, copyrights, trade secrets, know-how, and semiconductor mask works.

4. *Export Trade Facilitation Services (as they relate to the export of Products, Services, and Technology), Rights)*

Consulting, international market research, marketing and trade promotion, trade show participation, insurance, legal assistance, testing and certification of products, transportation, trade documentation and freight forwarding, communication and processing of export orders, warehousing, foreign exchange, financing, and taking title to goods.

Export Markets

The Export Markets include all parts of the world except (1) the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands) and (2) Canada.

Export Trade Activities and Methods of Operation

1. OPEI and/or one or more of its Members may:

a. Engage in joint bidding or other joint selling arrangements for Products and/or Services in Export Markets and allocate sales resulting from such arrangements;

b. Establish export prices for sales of Products and/or Services by the Members in Export Markets, with each Member being free to deviate from such prices by whatever amount it sees fit;

c. Discuss and reach agreements relating to interface specifications and engineering requirements demanded by specific potential customers for Products for Export Markets;

d. With respect to Products and/or Services, refuse to quote prices for, or to market or sell in, Export Markets;

e. Provide and/or jointly negotiate for and purchase from suppliers Export Trade Facilitation Services for Members;

f. Solicit non-member Suppliers to sell their Products and/or Services or offer their Export Trade Facilitation Services through the certified activities of OPEI and/or its Members;

g. Coordinate with respect to the installation and servicing of Products in Export markets, including the establishment of joint warranty, service, and training centers in such markets;

h. License associated Technology Rights in conjunction with the sale of Products, but in all instances the terms of such licenses shall be determined solely by negotiations between the licensor Member and the export customer without coordination with OPEI or any other Member;

i. Engage in Joint promotional activities, such as advertising and trade shows, aimed at developing existing or new Export Markets;

j. Bring together from time to time groups of Members to plan and discuss how to fulfill the technical product, service, and/or technology requirements of specific export customers or Export Markets; and

k. Operate and establish jointly owned subsidiaries or other joint venture entities, owned exciusiveiy by OPEI and/or its Members, to export Products to Export Markets; to operate warranty, service, and training centers in Export Markets; and to provide Export Trade Facilitation Services to Members.

2. OPEI and/or its Members may enter into agreements herein OPEI and/ or one or more Members agree to act in certain countries or markets as the Members' exclusive or nonexclusive Export Intermediary for Products and/or Services in that country or market. In such agreements, (i) OPEI or the Member(s) acting as an exclusive Export Intermediary may agree not to represent any other Supplier for sale in the relevant country or market, and (ii) Members may agree that they will export for sale in the relevant country, or market only through OPEI or the Member(s) acting as exclusive Export Intermediary, and that they, will not export independently to the relevant country or market, either directly or through any, other Export Intermediary.

3. OPEI and/or its Members may exchange and discuss the following types of information:

a. Information that is already generally available to the trade or public;

b. Information about sales and marketing efforts for Export Markets; activities and opportunities for sales of Products and Services in Export Markets; selling strategies for Export Markets; pricing in Export Markets; projected demands in Export Markets; customary terms of sale in Export Markets; the types of products available from competitors for sale in particular Export Markets, and the prices for such products; and customer specifications for products in Export Markets;

c. Information about the export prices, quality, quantity, source, available capacity to produce, and delivery dates of Products available from Members for export, provided however, that exchanges of information and discussions as to Product quantity, source, available capacity to produce Products, and delivery dates must be on a transaction-by-transaction basis only, and shall relate solely to Products intended for or available for export;

d. Information about terms and conditions of contracts for sales in Export Markets to be considered and/or bid on by OPEI and its Members;

e. Information about joint bidding, selling, or servicing arrangements for Export Markets and allocation of sales resulting from such arrangements among the Members;

f. Information about expenses specific to exporting to and within Export Markets, including without limitation transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

g. Information about U.S. and foreign legislation and regulations affecting sales in Export Markets; and

h. Information about OPEI's or its Members' export operations, including without limitation sales and distribution networks established by OPEI or its Members in Export Markets, and prior export sales by Members (including export price information).

4. OPEI may provide its Members or other Suppliers the benefit of any Export Trade Facilitation Services to facilitate the export of Products to Export Markets. This may be accomplished by OPEI itself, or by agreement with Members of other parties.

5. OPEI and/or its Members may meet to engage in the activities described in paragraphs one through four above.

6. OPEI and/or its Members may refuse to provide Export Trade Facilitation Services, or participation in

the other activities described in paragraphs one through five above, to non-members.

7. OPEI and/or its Members may forward to the appropriate individual member request for information received from a foreign government or its agent (including private preshipment inspection firms) concerning that Member's domestic or export activities (including prices and/or costs), and if such individual Member elects to respond, it shall respond directly to the requesting foreign government or its agent with respect to such information.

Definitions

1. An "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. "Members" means those regular member companies of OPEI listed in Appendix A and those member companies of OPEI subsequently incorporated in the Certificate pursuant to the amendment procedures set forth below.

New OPEI Members, including current OPEI members not listed in Appendix A, may be incorporated in the Certificate through an abbreviated amendment procedure described below. An abbreviated amendment shall consist of a written notification to the Secretary of Commerce and the Attorney General identifying the OPEI members that desire to become a Member under the Certificate pursuant to the abbreviated amendment procedure, and certifying for each such OPEI member the number of its employees and/or other relevant data. Notice of the members so identified shall be published in the Federal Register. However, OPEI may withdraw one or more individual members from the application for the abbreviated amendment. If 30 days or more following publication in the Federal Register, the Secretary of Commerce, with the concurrence of the Attorney General, determines that the incorporation in the Certificate of these members through the abbreviated amendment procedure is consistent with the standards of the Act, the Secretary of Commerce shall amend the Certificate of Review to incorporate such members, effective as of the date on which the application for amendment is deemed submitted. If the Secretary of Commerce does not within 60 days of publication in the Federal Register so amend the Certificate of Review, such amendment must be sought through the nonabbreviated amendment procedure.

3. A "*supplier*" means a person who produces, provides, or sells a Product, Service, Technology Right, and/or Export Trade Facilitation Services, whether a Member or non-member.

Dated: December 22, 1989.

Douglas J. Aller,

Director, Office of Export Trading Company Affairs.

Appendix A

American Yard Products, Augusta, GA; Atlas Power Equipment, Harvard, IL; Bunton Company, Louisville, KY; John Deere Horicon Works, Horicon, IL; Dixon Industries, Inc., Coffeyville, KS; Engineering Products Company, Inc., Waukesha, WI; Excel Industries, Inc., Hesston, KS; Exmark Manufacturing Company, Inc., Beatrice, NE; E-Z Rake, Inc., Lebanon, IN; Falls Products Inc., Geona, IL; Garden Way, Inc., Troy, NY; Garden Way, Inc./Port Washington, Troy, NY; Hoffco Inc., Richmond, IN; Homelite Division of Textron, Charlotte, NC; Honda Power Equipment Manufacturing, Inc. Swepsonville, NC; Howard Price Turf Equipment, Chesterfield, MO; Ingersoll Equipment Company, Inc., Winnecone, WI; Kut-Kwick Corporation, Brunswick, GA; Lambert Corporation, Ansonia, OH; Lawn-Boy Inc., A Subsidiary of OMC, Plymouth, WI; Maxim Manufacturing Corporation, Sebastopol, MS; Merry Tiller Inc., Birmingham, AL; MTD Products Inc., Cleveland, OH; The Murray Ohio Manufacturing Company, Brentwood, TN; NOMA Outdoor Product, Inc., Jackson, TN; Ransomes, Inc., Johnson Creek, WI; The Roto-Hoe Company, Newbury, OH; Sarlo Power Mowers, Inc.; Fort Myers, FL; Scag Power Equipment, Inc., Mayville, WI; Simplicity Manufacturing, Inc., Port Washington, WI; Snapper Power Equipment, McDonough, GA; Solo Incorporated, Newport News, VA; Southland Mower Company, Selma AL; Tornado Products, Inc., Germantown, WI; The Toro Company, Minneapolis, MN; Toro Wheel Horse, South Bend, IN; Trailmate, Inc., Sarasota, FL; Wheeler Manufacturing Company, Harvard, IL; and Yazoo Manufacturing Company, Inc., Jackson, MS.

[FR Doc. 89-30290 Filed 12-29-89; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Shickrey Anton from an Objection by the South Carolina Coastal Council

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal.

On October 4, 1989, Shickrey Anton (Appellant), filed with the Secretary of Commerce a notice of appeal under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's (Department) implementing regulations, 15 CFR part 930, subpart H. The appeal is taken from an objection by the South Carolina Coastal Council (State) to the Appellant's consistency certification for a U.S. Army Corps of Engineers' (Corps) permit to place dredged and fill material in a wetland in the south Carolina coastal zone. The State's objection precludes the Corps from issuing the permit to the Appellant pending the outcome of the Appellant's appeal.

If Appellant perfects the appeal by filing the supporting data and information required by the Department's implementing regulations, public comments will be solicited by a notice in the Federal Register and a local newspaper.

FOR ADDITIONAL INFORMATION CONTACT: Kirsten Erickson, Attorney-Adviser, NOAA Office of General Counsel, U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235 (202) 673-5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: December 21, 1989.

John A. Knauss,

Under Secretary for Oceans and Atmosphere.

[FR Doc. 89-30318 Filed 12-29-89; 8:45 am]

BILLING CODE 3510-08-M

Coastal Zone Management; Federal Consistency Appeal by The Riggings Homeowners Association From an Objection by North Carolina Division of Coastal Management

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of dismissal.

On October 17, 1988, The Riggings Homeowners Association (Appellant) filed with the Department of Commerce (Department) a notice of appeal under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1456(c)(3)(A), and implementing regulations, 15 CFR part 930, subpart H. The appeal arose from an objection by the North Carolina Division of Coastal Management (State) to the Appellant's consistency certification for U.S. Army Corps of Engineer's Permit to perform beach nourishment and groin reconstruction at The Riggings, a condominium development in Kure Beach, North Carolina. On Mary 9, 1989, former Under

Secretary Evans granted a six month stay of the appeal. That stay expired on September 11, 1989 and appellant's brief was due on October 11, 1989. Appellant has failed to file a brief. Accordingly, the Department dismissed the appeal on November 16, 1989 for good cause pursuant to 15 CFR 930.128 (1988). That dismissal bars the Appellant from filing another appeal from the State's original objection to the aforementioned activities.

FOR ADDITIONAL INFORMATION CONTACT: Kirsten Erickson, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC, 20235, (202) 673–5200.

(Federal Domestic Assistance Catalog No. 11.149 Coastal Zone Management Program Assistance)

Dated: December 21, 1989.

John A. Knauss,

Under Secretary for Oceans and Atmosphere.

[FR Doc. 89–30319 Filed 12–29–89; 8:45 am]

BILLING CODE 3510–08–M

Atlantic Sea Scallop Fishery; Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Temporary adjustment of standards; notice of a public hearing and request for comments.

SUMMARY: NMFS will hold a public hearing, in conjunction with a meeting of the New England Fishery Management Council (Council), to solicit public input on a temporary adjustment of the meat count/shell height standard from 30 to 35 meats per pound (3½ to 3⅜ inch shell height) for Atlantic sea scallops.

DATES: The public hearing will be held on January 10, 1990, beginning at 1:30 p.m. Written comments will be accepted through January 10, 1990, at the address given below.

ADDRESS: The hearing will be held at the Colonial Hilton Inn, Routes 128/95, Wakefield, Massachusetts. All written comments should be addressed to Richard Roe, Director, Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930. Please mark the envelope "Scallop Management Comments".

FOR FURTHER INFORMATION CONTACT: Patricia Kurkul (Scallop Management Coordinator), Northeast Region, 508–281–9300.

SUPPLEMENTARY INFORMATION: Section 650.22 of the regulations implementing the Fishery Management Plan for Atlantic Sea Scallops (FMP) (50 CFR part 650) require the Director, Northeast Region, NMFS (Regional Director), to review the status of the Atlantic sea scallop resource on a continuing basis. In addition, the Regional Director annually must prepare a report concerning the status of the fishery and possible changes in the resource, fishery, or industry that might require adjustment of the management program. Such a report was prepared and reviewed at the Council's November 1989 meeting.

The FMP regulations at 50 CFR 650.22(c)(4) include a provision for adjustment of the management standards if analysis of the sea scallop size distribution shows that more than 50 percent of the harvestable sea scallop biomass is at sizes smaller than those consistent with the prevailing standards and that a temporary relaxation of the standards would not jeopardize future recruitment to the fishery.

The Regional Director's report indicated that 65.2 percent of the harvestable biomass of sea scallops consists of scallops smaller than the 30 meat count standard, based on the 1989 scallop survey. The Council believes that an adjustment of the standards at this time will not jeopardize future recruitment to the fishery. The Council recommends that the management standard be adjusted to permit the harvest of sea scallops at a 35 meat count per pound (3⅜ inch shell height) standard as soon as possible, plus a 10 percent tolerance, on a temporary basis.

The public hearing will provide an opportunity for all interested persons to comment on the recommendation of the Council. Following the hearing, a final determination will be made by the Regional Director and an implementing rule, if required, will be published in the **Federal Register.**

Dated: December 26, 1989.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–30366 Filed 12–29–89; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Permit Program Review; Permits for Taking Marine Mammals for Public Display and Scientific Research Purposes

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice.

SUMMARY: NMFS will hold two technical meetings on the administrative and legal aspects of the role of the National Environmental Policy Act (NEPA) in the conduct of its permit program for marine mammals.

These meetings are part of a comprehensive review of NMFS's permit program to take marine mammals for purposes of public display and scientific research. Note that these meetings are not hearings or NEPA training sessions. We hope participants will be prepared to contribute substantively to a discussion about the role of NEPA in NMFS's permit program.

DATES: Persons wishing to participate in one or both meetings should notify the Information Contact listed below by Thursday January 5, 1990 so that we can arrange suitable meeting space for attendees. The meetings will be held on Monday, January 8, 1990, in Washington, DC, at 1 pm at the Council on Environmental Quality, and Thursday, January 11, 1990, in Seattle, WA, at 9 am at the National Marine Mammal Laboratory.

ADDRESSES: (January 8, 1990) Council on Environmental Quality, First Floor Conference Room; 722 Jackson Place, NW., Washington, DC.

(January 11, 1990) National Marine Mammal Laboratory; 7600 Sand Point Way NE, Seattle, WA.

FOR FURTHER INFORMATION CONTACT: Art Jeffers, Permits Division, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910; telephone 301/427–2289.

SUPPLEMENTARY INFORMATION: NOAA Fisheries is conducting a review of its program and policies for issuing permits to take marine mammals for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock pursuant to the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361–1407), and for scientific research and enhancement pursuant to the Endangered Species Act (See 54 FR 13099, March 30, 1989 and 54 FR 27663, June 30, 1989).

Dated: December 22, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–30303 Filed 12–29–89; 8:45 am]

BILLING CODE 3510–22–M

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will hold a public meeting on January 10–11, 1990, at the Colonial Hilton Inn, Routes 128 and 95, Wakefield, MA. The Council will begin its meeting at 10 a.m., on January 10. It will reconvene on January 11 at 9 a.m., and will adjourn when agenda items have been completed.

On the first day, the Council will hear reports from the Large Pelagics Oversight, the Lobster and the Coastal Migratory Committees. Following a Scallop Committee report, there will be a National Marine Fisheries Service (NMFS) public hearing on the temporary adjustment of the meat count. In addition, Dr. Dennis Nixon will brief the Council on the National Research Council's fishing vessel safety project.

On the second day, the Council will hear the Groundfish and Herring Committees' reports. In addition, there will be a public hearing on possible area closures because of problems with high discards of undersized yellowtail flounder. Also, Mr. James Dobbin will discuss ocean planning in the Gulf of Maine.

For more information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone: (617) 231–0422.

Dated: December 27, 1989.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–30363 Filed 12–29–89; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Reef Ltd.; Dolphins and Sea Lions

AGENCY: National Marine Fisheries Service (NOAA Fisheries), NOAA, Commerce.

ACTION: Extension of comment period.

SUMMARY: A notice was published in the **Federal Register** on November 17, 1989 (54 FR 47805) indicating that Reef Ltd., South Coast, P.O.B. 104 Eilat, Israel, applied in due form for a public display permit to capture six Atlantic bottlenose dolphins (*Tursiops truncatus*) off the west coast of Florida, and to acquire six California sea lions (*Zalophus californianus)* from beach/stranded stocks, for maintenance at Reef Ltd.

On August 30, 1989, NOAA Fisheries received notification from the applicant stressing the point that there would be "no physical contact between the visitors at the site (observer, swimmer, diver) and the animals." Questions have been raised by some reviewers about whether this project is related to issues raised in the "Swim-with-the-dolphin Programs" draft environmental impact statement (54 FR 46755).

Since the applicant is a facility in a foreign country, and in an effort to ensure a complete record on which to base a decision, NOAA Fisheries is extending the comment period on this application for an additional thirty (30) days in consideration of the interest expressed and issues raised concerning the application.

This extension becomes effective upon publication in the **Federal Register.**

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Highway, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 7330, Silver Spring, Maryland 20910; and

Director, Southeast Region, National Marine Fisheries Service, NOAA 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: December 22, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–30311 Filed 12–29–89; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Permit Modification Request; Southwest Fisheries Center, NMFS (P77 No. #33)

Notice is hereby given that the Southwest Fisheries Center, National Marine Fisheries Service has requested a second modification of Permit No. 680 issued on August 16, 1989, (54 FR 35221), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), and the regulations governing endangered fish and wildlife permits (50 CFR parts 217–222).

The Permit authorizes the taking of tissue samples by biopsy dart from up to 80 individuals/yr for three years of 30 stocks of marine mammals in the Eastern Tropical Pacific. In Modification Request No. 1 (54 FR 37821), the Permit Holder requested authorization to collect tissue samples by biopsy dart from up to 80 individuals/yr for three years each, the Costa Rican form of the spinner dolphin (*Stenella longirostris*) and the coastal form of the spotted dolphin (*Stenella attenuata*) to the stocks already authorized.

In addition to what was previously requested the Permit Holder is requesting authorization to collect skin and tissue samples by biopsy dart from up to 20 individuals/yr for three years each for the following additional species:

Blainville's Beaked Whale (*Mesoplodon densirostris*)
Hubbs' Beaked Whale (*Mesoplodon carlhubbsi*)
Gray's Beaked Whale (*Mesoplodon grayi*)
Unspecified Toothed Whales (*Odontoceti*)
Unidentified Beaked Whales (*Mesoplodon sp.*)
Bottlenose Whales (*Hyperoodon sp.*)
Baird's Beaked Whale (*Berardius bairdii*)
Cuvier's Beaked Whale (*Ziphius cavirostris*)
Dwarf Sperm Whale (*Kogia simus*)
Pygmy Sperm Whale (*Kogia breviceps*)
Sperm Whale (*Physeter catodon*)
Minke Whale (*Balaenoptera acutorostrata*)
Bryde's Whale (*Balaenoptera edeni*)
Blue Whale (*Balaenoptera musculus*)
Fin Whale (*Balaenoptera physalus*)
Sei Whale (*Balaenoptera borealis*)
Humpback Whale (*Megaptera novaeangliae*)

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of the modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, NOAA, Silver Spring Metro Center 1, 1335 East–West Highway, Room 7324, Silver Spring, Maryland 20910, within 30 days of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

The modification request and associated documents are available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, Room 7324, Silver Spring, MD 20910;

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, CA 90731–7451; and

Administrator, Pacific Area Office, National Marine Fisheries Service, NOAA, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396.

Dated: December 22, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 89–30312 Filed 12–29–89; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Modification to Permit No. 517.

SUMMARY: Dr. W. John Richardson of LGL Limited, Environmental Research Associates, P.O. Box 280, King City, Ontario, LOG lKO, Canada, requested a modification to Permit No. 517. Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and § 220.24 of the Regulations on Endangered Species (50 CFR parts 217–227), Scientific Research Permit No. 517 is modified as follows:

Section B.7. is revised to read:

7. This Permit is valid with respect to the taking authorized herein until December 31, 1991.

Documents submitted in connection with Permit No. 517 and modifications are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, room 7324, Silver Spring, Maryland 20910; and

Director, Southwest Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

Dated: December 22, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–30302 Filed 12–29–89; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Issuance of Permit Modification; Center for Coastal Studies (P79D)

Modification No. 3 to Permit No. 496

Notice is hereby given that, pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR 216), Scientific Research Permit No. 496 issued to the Center for Coastal Marine Studies, University of California at Santa Cruz, Santa Cruz, California 95064 on April 8, 1985 (50 FR 15214), as modified on May 6, 1987 (52 FR 16889), as modified on June 29, 1987 (52 FR 24201) is further modified as follows:

Section A.2 is added:

2. Of the 4,940 elephant seals (*Mirounga angustirostris*) listed in A.1, up to 50 juveniles per year may be captured, immobilized, weighed and measured, tagged with TDR and a radio transmitter, and transported up to 50 miles from their home rookery provided there is an 80% return on the initial six animals to be released and an 80% return on each additional set of six animals transported and released.

3. Tissue samples may be collected from up to 500 adult male seals, 600 adult females and 600 pups per year and exported to England for collaborative genetic or pesticide analyses.

This modification becomes effective upon publication in the **Federal Register.**

Documents associated with the Permit, this modification and subsequent modifications are available in the following offices:

Director, Office of Protected Resources, Permit Division, National Marine Fisheries Services, 1335 East West Highway, room 7324, Silver Spring, Maryland 20910; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: December 22, 1989.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 89–30305 Filed 12–29–89; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Modification of Permit; Clearwater Marine Science Center (P414A)

Modification No. 1 to Permit No. 661

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Public Display Permit No. 661 issued to the Clearwater Marine Science Center, 249 Windward Passage, Clearwater, Florida 34630, on February 8, 1989 (54 FR 6563) is modified in the following manner:

Section B.9 is replaced by:

9. This authority to acquire the marine mammal authorized herein, shall extend from the date of issuance through December 31, 1990. The terms and conditions of this Permit (Section B and C) shall remain in effect as long as the marine mammal taken hereunder is maintained in captivity under the authority and responsibility of the Permit Holder.

This modification becomes effective on December 31, 1989.

Documents submitted in connection with the above modification are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 7324, Silver Spring, Maryland 20910;

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702;

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 0l930;

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731; and

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sandpoint Way NE, BIN C15700, Seattle, Washington 98115.

Dated: December 22, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–30306 Filed 12–29–89; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Permit Modification: Dr. Daniel P. Costa (227G)

Modification No. 1 to Permit No. 449

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Scientific Research Permit No. 449 issued to Dr. Daniel P. Costa, Center for Marine Studies, University of California, Santa Cruz, California 95064, on February 3, 1984 is modified as follows:

Section B.9 is changed to read:

B.9 The authority to capture or otherwise acquire these marine mammals shall extend from the date of issuance through December

31, 1989. The terms and conditions of this Permit (Sections B and C) shall remain in effect as long as one of the marine mammals taken hereunder is maintained in captivity under the authority and responsibility of the Permit Holder.

This modification becomes effective upon publication in the **Federal Register**.

Documents pertaining to the Permit and modification are available for review in the following Offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, room 7324, Silver Spring, Maryland 20910.

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dated: December 22, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–30307 Filed 12–29–89; 8:45 am]

BILLING CODE 3510–22–M

Endangered Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Request for modification to Scientific Research Permit No. 675.

SUMMARY: Notice is hereby given that Dr. C. Scott Baker, the Department of Health and Human Services, Section of Genetics, National Cancer Institute, has requested a modification to Permit No. 675, pursuant to the provisions of § 216.33(d) and (2) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and § 220.24 of the Regulations Governing Endangered Species (50 CFR part 217–222).

Permit No. 675, issued August 24, 1989 (54 FR 35220), authorized taking by harassment of up to 400 humpback whales (*Megaptera novaeangliae*) during photo-identification activities and the collection of skin biopsies in the territorial waters of the United States. The Permit was modified on November 15, 1989 (54 FR 47543) to include Alaska, Hawaii, the Mariana Islands, and the Antarctic continent. This Modification would allow for an increase in the collection and importation from the sea of biopsy samples from a maximum of 80 minke whales (*Balaenoptera acutorostrata*) and 40 southern right whales (Eubalaena australis) from the Antarctic Peninsula region of the southern hemisphere. The purpose of the proposed research is to collect individual identification photographs and biopsy samples to describe regional abundance and local distribution; levels of genetic variability; and genetic relationship to other stocks in the southern hemisphere and to conspecific populations in the North Pacific and North Atlantic oceans. This modification would also include the importation of biopsy samples of humpback whales (*Megaptera novaeangliae*) collected in the territorial waters of other nations. Each imported sample will be considered as one of the 400 individual "takes" requested in the original permit application.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Highway, room 7330, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, room 7330, Silver Spring, Maryland 20910;

Director, Alaska Region, National Marine Fisheries Service, NOAA, 709 West 9th Street, Federal Bldg., Juneau, Alaska 99802;

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930;

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115;

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702;

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731–7415; and

Administrator, Western Pacific Program Office, National Marine Fisheries Service, NOAA 2570 Dole Street, room 106, Honolulu, Hawaii 96822–2396.

Dated: December 22, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–30304 Filed 12–29–89; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Permit Modification: Miami Seaquarium (P35F)

Modification No. 2 to Permit No. 621

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Scientific Research Permit No. 621 issued to Miami Seaquarium, 4400 Rickenbacker Causeway, Miami, Florida 33149 on December 18, 1987 (52 FR 48746), as modified on February 12, 1988 (53 FR 10553) is further modified as follows:

Section B.3 is replaced by:

3. The authority to import these marine mammals shall extend from the date of issuance until December 31, 1991. The terms and conditions of this Permit shall remain in effect as long as one of the marine mammals taken hereunder is maintained in captivity under the authority and responsibility of the Permit Holder.

This modification becomes effective upon publication in the **Federal Register**.

Documents pertaining to the Permit and all modifications are available for review in the following Offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, room 7324, Silver Spring, Maryland 20910,

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Miami.

Dated: December 22, 1989.

Nany Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89-30308 Filed 12–29–89; 8:45 am]

BILLING CODE 3510-22-M 3510-22

Marine Mammals; Permit Modification: Naval Facilities Engineering Command (P8D)

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), and § 222.25 of the regulations governing endangered species permits (50 CFR part 222) Scientific Research Permit No. 613 issued to the Naval Facilities Engineering Command on October 21, 1987 (52 FR 41315) is modified as follows:

Section B.7 is deleted and replaced by:

7. This permit is valid with respect to the taking authorized herein until December 31, 1990.

This modification is effective upon publication in the **Federal Register.**

Documents submitted in connection with the above application are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 7330, Silver Spring, Maryland 20910;
Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702;
Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930; and
Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731

Dated: December 22, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs National Marine Fisheries Service.

[FR Doc. 89-3039 Filed 12-29-89; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Modification of Permits; Dr. Kenneth S. Norris, Dr. Randall S. Wells, and Dr. William T. Doyle

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 547 issued to Dr. Kenneth S. Norris, Dr. Randall S. Wells, and Dr. William T. Doyle, Institute of Marine Sciences, Long Marine Laboratory, 100 Shaffer Road, Santa Cruz, California 95060, on May 9, 1986 (51 FR 18477); Permit No. 569 issued on November 4, 1986 (51 FR 40997) and Permit No. 572 issued on November 19, 1986 (51 FR 43066 are modified in the following manner:

1. Permit No. 547—Section B.7 is replaced by:

7. The take authority of this Permit is valid until December 31, 1992.

2. Permit No. 569—Section B.7 is replaced by:

7. The authority to capture these marine mammals, to take by tagging or other activities authorized herein, shall extend from date of issuance through December 31, 1992.

3. Permit No. 572—Section B.8 is replaced by:

8. The authority to capture these marine mammals, shall extend from date of issuance through December 31, 1992. The terms and conditions of this Permit (Sections B and C) shall remain in effect as long as one of the marine mammals taken hereunder is maintained in captivity under the authority and responsibility of the Permit Holder.

These modifications are effective on December 31, 1989.

Documents submitted in connection with the above modifications are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, room 7324, Silver Spring, Maryland 20910; and
Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Dated: December 22, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89-30310 Filed 12-29-89; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1990; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to procurement list 1990 a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: February 1, 1990.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On October 20, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (54 FR 43103) of proposed addition to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540).

Comments were received prior to the issuance of the notice of proposed addition and during the official comment period from the local and national unions representing employees of the firm that had previously provided that service under the SBA 8(a) program. The Union expressed concern about the loss of jobs and benefits for those employees many of whom are minorities and have worked at the building for several years. The commenters pointed out that the employees displaced would have difficulty in finding employment with comparable wages and benefits.

The purpose of the Committee's program is to create jobs for workers who are blind and have other severe disabilities. Workshops for the blind and severely handicapped exist and are given preferential treatment in Federal procurement because the employment and training needs of such individuals are not being met by other sources. Although employees who may be displaced as the result of this addition may have difficulty in finding similar jobs at the same wages and benefits, the severely disabled employees who will be provided employment have difficulty in finding jobs at any wage. This action will create much-needed employment for severely disabled persons in fulfillment of the purpose of the Committee's Act.

The previous contractor has been determined by the Small Business Administration to be ineligible for continued provision of this service under the SBA 8(a) program because it exceeds the established small business size standards for janitorial services. Although an assessment of impact on previous contractors for items being considered for addition to the Procurement List is not required by Committee procedures, the value of that firm's contract represents approximately 5.7 percent of its annual sales. This would not under any circumstances be considered severe adverse impact.

After consideration of the material presented to it concerning the capability of a qualified workshop to provide this service at a fair market price and the impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 64–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to Procurement List 1990:

Janitorial/Custodial

Philip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, San Francisco, California

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 89–30359 Filed 12–29–89; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1990; Addition

AGENCY: Committee for Purchase from the blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to Procurement List 1990 a service to be provided by workshops for the Blind or other severely handicapped.

EFFECTIVE DATE: February 1, 1990.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On October 27, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (54 FR 43846) of proposed addition to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540).

Comments were received prior to the issuance of the notice of proposed addition and during the official comment period from the local and national unions representing employees of the firm that had previously provided this service. The Union expressed concern about the loss of jobs and benefits for those employees many of whom are minorities. The commenters pointed out that the employees displaced would have difficulty in finding employment with comparable wages and benefits.

The purpose of the Committee's program is to create jobs for workers who are blind and have other severe disabilities. Workshops for the blind and severely handicapped exist and are given preferential treatment in Federal procurement because the employment and training needs of such individuals are not being met by other sources. Although employees who may be displaced as the result of this addition may have difficulty in finding similar jobs at the same wages and benefits, the severely disabled employees who will be provided employment have difficulty in finding jobs at any wage. This action will create much-needed employment for severely disabled persons in fulfillment of the purpose of the Committee's Act.

Although an assessment of impact on the previous contractor for items being considered for addition to the Procurement List is not required by Committee procedures, the value of that firm's contract represents less than one percent of its annual sales. This would not under any circumstances be considered severe adverse impact.

After consideration of the material presented to it concerning the capability of a qualified workshop to provide the service at a fair market price and the impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to Procurement List 1990:

Janitorial/Custodial

Boston National Historical Park Building, 15 State Street, Boston, Massachusetts

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 89–30360 Filed 12–29–89; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1990; Proposed Additions

AGENCY: Comittee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1990 commodites to be produced and a service to be provided by workshops for the blind or other severely handicapped..

Comments Must Be Received On Or Before: February 1, 1990

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and service to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540):

Commodities

Staff Section

1010–00–225–4906

Antifreeze

6850–00–664–1403
6850–00–664–1409

Mat, Floor

7220–00–305–3062

Streamer, Warning, Aircraft

8345–00–673–9992

Slacks, Woman's

8410–01–224–0485
8410–01–224–0486

8410-01-224-0487
8410-01-224-0488
8410-01-224-0489
8410-01-224-0490
8410-01-224-0491
8410-01-224-0492
8410-01-224-0493
8410-01-224-0494
8410-01-224-0495
8410-01-224-0496
8410-01-224-0497
8410-01-224-0498
8410-01-224-0499
8410-01-224-0500
8410-01-224-0501
8410-01-224-0502
8410-01-224-0503
8410-01-224-0504
8410-01-224-0505

Service

Janitorial/Custodial

Internal Revenue Service Center, Child Care Center, 3651 South Interregional Highway 35, Austin, Texas

E. R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 89-30361 Filed 12-29-89; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1990; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1990 services to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: February 1, 1990.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On September 15, October 20 and November 3, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (54 FR 38266, 43103 and 46445) of proposed additions to Procurement List 1990, which was published on November 3, 1989 (54 FR 47540).

After consideration of the material presented to it concerning the capability of a qualified workshop to provide the services at a fair market price and the impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the services listed.

c. The actions will result in authorizing small entities to provide the services procured by the Government.

Accordingly, the following services are hereby added to Procurement List 1990:

Commissary Shelf Stocking & Custodial

Fort Stewart, Georgia

Commissary Shelf Stocking & Custodial

Fort Lee, Virginia

Commissary Shelf Stocking, Custodial and Warehousing

Charleston Air Force Base, South Carolina

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 89-30362 Filed 12-29-89; 8:45 am]

BILLING CODE 6820-32-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Advisory Board; Closed Meeting

AGENCY: Defense Intelligence Agency Advisory Board.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92-463, as amended by section 5 of Public Law 94-409, notice is hereby given that a closed meeting of a committee of the DIA Advisory Board has been scheduled as follows:

DATE: Tuesday, 23 January 1990 (9:00 a.m. to 5:00 p.m.)

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Chief, DIA Advisory Board Office, Washington, DC 20340-1328 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), title 5 of the U.S. Code and therefore will be closed to the public. Subject mater will be used in a special study on Intelligence Support to the U&S Commands.

Dated: December 27, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-30372 Filed 12-29-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency Advisory Board; Closed Meeting

AGENCY: Defense Intelligence Agency Advisory Board.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92-463, as amended by section 5 of Public Law 94-409, notice is hereby given that a closed meeting of a committee of the DIA Advisory Board has been scheduled as follows:

DATE: Tuesday, 23 January 1990 (9:00 a.m. to 5:00 p.m.).

ADDRESS: The DIAC, Bolling AFB Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Chief, DIA Advisory Board Office, Washington, DC 20340-1328 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), title 5 of the U.S. Code and therefore will be closed to the public. Subject mater will be used in a special study on Intelligence Support for Arms Control Monitoring.

Dated: December 27, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-30373 Filed 12-29-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency Advisory Board; Closed Meeting

AGENCY: Defense Intelligence Agency Advisory Board.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92-463, as amended by section 5 of Public Law 94-409, notice is hereby given that a closed meeting of a committee of the DIA Advisory Board has been scheduled as follows:

DATE: Tuesday, 23 January 1990 (9:00 a.m. to 5:00 p.m.)

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Chief, DIA Advisory Board Office, Washington, DC 20340–1328 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on DIA Modernization.

Dated: December 27, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–30374 Filed 12–29–89; 8:45 am]

BILLING CODE 3810–01–M

Defense Intelligence Agency Advisory Board; Closed Meeting

AGENCY: Defense Intelligence Agency Advisory Board.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of a committee of the DIA Advisory Board has been scheduled as follows:

DATE: Tuesday, 23 January 1990 (9:00 a.m. to 5:00 p.m.).

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Chief, DIA Advisory Board Office, Washington, DC 20340–1328 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Intelligence Production.

Dated: December 27, 1989

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–30375 Filed 12–29–89; 8:45 am]

BILLING CODE 3810–01–M

Defense Intelligence Agency Advisory Board, Closed Meeting

AGENCY: Defense Intelligence Agency Advisory Board.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Advisory Board has been scheduled as follows:

DATES: Wednesday and Thursday, 24–25 January 1990 (9:00 a.m. to 5:00 p.m. each day).

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Chief, DIA Advisory Board Office, Washington, DC 20340 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA on related scientific and technical intelligence matters.

Dated: December 27, 1989

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–30376 Filed 12–29–89; 8:45 am]

BILLING CODE 3810–01–M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, February 6, 1990; Tuesday, February 13, 1990; Tuesday, February 20, 1990; and Tuesday, February 27, 1990 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 93–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92–463, meeting may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and priviledged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b. (c)(2)), and the detailed wage data considered from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

Dated: December 27, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–30377 Filed 12–29–89; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

December 20, 1989.

The USAF Scientific Advisory Board Munition Systems Division Advisory Group will meet on 1–2 Feb 90 from 8:00 a.m. to 5:00 p.m. in Building 1, Eglin AFB, Florida.

The purpose of this meeting is to review current development planning, analysis, and methodology processes and the status of recent changes that have been implemented. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89–30297 Filed 12–29–89; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services. Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection regarding Sale of Used Items to Government.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. John L. O'Neill, Office of Federal Acquisition Policy, GSA (202) 523–3856.

SUPPLEMENTARY INFORMATION: .

a. *Purpose:* The Government does not normally purchase used items. Therefore, when a contractor proposes the substitution of a used item for a new item, data must be furnished to the contracting officer so the proposal can be properly evaluated. A description of the item, quantity, date of acquisition, source and monetary advantages to the Government are the basic data necessary to evaluate the proposal.

Upon completion of the contracting officer's evaluation and determination the data is placed in the contract file and becomes a matter of record.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *790;* responses per respondent, *4;* total annual responses, *3,160;* hours per response, *.25;* and total response burden hours, *790.*

Obtaining Copies of Proposals:

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0030, Sale of Used Items to Government.

Dated: December 22, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89–30323 Filed 12–29–89; 8:45 am]

BILLING CODE 6820–JC–M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of an information collection concerning Anti-Kickback Procedures.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Victoria Moss, Office of Federal Acquisition Policy, (202) 523–5168 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a *Purpose:* Federal Acquisition Regulation (FAR) 52.203–7, Anti-Kickback Procedures, requires that all contractors have in place and follow reasonable procedures designed to prevent and detect in its own operations and direct business relationships, violations of Section 3 of the Anti-Kickback Act of 1986 (41 U.S.C 51–58).

Whenever prime contractors or subcontractors have reasonable grounds to believe that a violation of Section 3 of the Act may have occurred, they are required to report the possible violation in writing to the contracting agency or the Department of Justice. The information is used to determine if any violations of Section 3 of the Act have occurred.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *2500;* responses per respondent, *1;* total annual responses, *2500;* hours per response, *1;* and total response burden hours, *2500.*

Obtaining Copies of Proposals:

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0091, Anti-Kickback Procedures.

Dated: December 22, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89–30324 Filed 12–29–89; 8:45 am]

BILLING CODE 6820–JC–M

DEPARTMENT OF ENERGY

[Docket No. PP–91]

Intent To Prepare an Environmental Impact Statement and To Conduct Public Scoping Meetings; Puget Sound Power & Light Co.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of intent by the Department of Energy (DOE) to prepare an environmental impact statement (EIS) and to hold public scoping meetings to assess the environmental effects of the construction and operation of an electric transmission line crossing the U.S. international border.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA) and the regulations of the Council on Environmental Quality at 40 CFR 1501.7, the DOE announces its intention to prepare an EIS and to conduct public scoping meetings. This EIS will be prepared to assess the environmental impacts of a proposed DOE action: To grant (with terms and conditions) or to deny a Presidential permit authorizing Puget Sound Power & Light Company (Puget Power) to construct, connect, operate and maintain at the international border between the United States and Canada new facilities for the transmission of electric energy.

Written comments should be addressed to: Ellen Russell, Office of Fuels Programs (FE–52), Office of Fossil Energy, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9624.

For general information on the EIS process contact:

Carol M. Borgstrom, Director, Office of NEPA Project Assistance (EH–25), Department of Energy, 1000

Independence Avenue SW., Washington, DC 20585, (202) 586–4600.
Steven E. Ferguson, Office of General Counsel (GC–11), Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6947

DATE: The public scoping meetings will be convened at 7 p.m. on Monday, January 29, 1990, at the Lynden High School, 1201 Bradley Road, Lynden, Washington, and at 7 p.m. on January 30, 1990, at the Nendels Motor Inn, 714 Lakeway Drive, Bellingham, Washington.

Written comments, or documents submitted in support of oral statements presented at the public scoping meetings will be accepted until March 5, 1990.

SUPPLEMENTARY INFORMATION: On May 31, 1989, Puget Power applied to the Office of Fuels Programs (OFP), Fossil Energy, pursuant to Executive Order No. 10485, as amended by Executive Order No. 12038, for a Presidential permit to construct, connect, operate and maintain electric transmission facilities at the international border between the U.S. and Canada. This application has been docketed as PP–91. Puget Power's proposed project is scheduled for service by December 1992 and would consist of the construction of two 23-mile, 230-kilovolt, overhead electric transmission lines which would cross the U.S.-Canadian border near Lynden, Washington. One line would terminate at the existing Bellingham, Washington substation; the second line would interconnect with existing Puget Power transmission lines two miles south of the Bellingham substation. The proposed facilities would interconnect at the U.S.-Canadian border with similar facilities to be constructed by the British Columbia Hydro and Power Authority (B.C. Hydro).

In order to construct the proposed facilities, Puget Power must acquire approximately 16 miles of 160-foot wide right-of-way to accommodate a double row of wooden "H-frame" support structures. The additional seven miles will be supported by single wood poles utilizing both existing public and private rights-of-way and rights-of-way yet to be purchased.

According to the applicant, the proposed interconnection is intended to relieve local transmission difficulties and to provide a reliable electric system under both normal and peak loading conditions during all seasons. Puget Power also asserts that the proposed intertie would provide a new path for power transactions between B.C. Hydro and Puget Power, thus reducing the need for and the impact of new generation resources.

The DOE has determined that the issuance of a Presidential permit to Puget Power for the proposed facilities would constitute a major Federal action significantly affecting the quality of the human environment. Consequently, pursuant to the provisions of the NEPA, and EIS will be prepared to assess the impact of the proposed action on the environment.

Interested agencies, organizations, and members of the general public desiring to submit written comments or suggestions for consideration in connection with the preparation of this EIS are invited to do so and are encouraged to attend the public scoping meetings which will be held on January 29 at the Lynden High School in Lynden, Washington, and at Nendels Motor Inn in Bellingham, Washington, on January 30.

Parties who desire to present oral comments at the scoping meeting should provide advanced notice to the DOE as described below under "COMMENTS AND SCOPING MEETINGS." Upon completion of the draft EIS, its availability will be announced in the Federal Register, at which time further comments will be solicited.

Preliminary Definition of Environmental Issues

The purpose of this notice is to solicit comments and suggestions for consideration in preparation of the EIS. As background for public comment and suggestions, it is useful to list those environmental issues which have been tentatively identified for analysis and assessment in the EIS. This list is not intended to be all inclusive nor to imply any predetermination of impacts.

Additional issues for analysis may be identified as a result of public comment.

A. Environmental Issues Associated with Transmission Line Construction

(1) The loss or modification of upland plant communities due to the permanent removal of all tall-growing vegetation from proposed rights-of-way, and of all vegetation from tower footings, access roads, and substation sites;

(2) Minor relocations and alterations to other existing facilities along proposed rights-of-way;

(3) Temporary disruption of wildlife communities, agricultural production, and other land uses along the line route during actual construction;

(4) Potential long-term effects on wildlife communities from loss and modification of habitat;

(5) Temporary interference with aquatic life during construction at stream and river crossings;

(6) Potential long-term effects to aquatic resources from erosion and sedimentation and clearing of riparian vegetation;

(7) Temporary socioeconomic perturbations due to the influx of construction workers into sparsely populated areas;

(8) Temporary noise and air pollution resulting from operation of construction equipment and from burning of slash from clearing rights-of-way;

(9) Disruption and displacement of soils during activities associated with land clearing; and

(10) Potential disturbance and contamination of groundwater.

B. Environmental Issues Associated with Transmission Line Operation and Maintenance

(1) Long-term withdrawal of traditional land use (e.g., forest, agriculture, residential) within rights-of-way and land required for other project facilities;

(2) Periodic interference with plant and wildlife communities along rights-of-way due to required maintenance activities, particularly vegetation control;

(3) Generation of acoustic noise and electromagnetic interference with radio and television reception along rights-of-way;

(4) Possible biological effects such as reduced growth or viability for plant and animal species resident within or in proximity or rights-of-way;

(5) Possible health effects from periodic and/or prolonged exposure to electric and magnetic fields produced by alternating current transmission;

(6) Possible long-term effects on public health and aquatic and terrestrial organisms due to the use of herbicides for vegetation control along rights-of-way;

(7) Indirect ecological and socioeconomic effects resulting from easier unauthorized human access to some areas via access roads and rights-of-way, such as increased hunting or use by motorcycles or snowmobiles;

(8) Long-term impacts resulting from the presence of support towers, conductors, and other project facilities.

C. Other Specific Environmental Issues

(1) The possibility of affecting threatened or endangered species or critical habitats for such species;

(2) Identification and review of alternatives to construction within a 100-year floodplain or identified

wetlands and identification and review of mitigating measures to be taken if it is found that there are no practicable alternatives to construction in a floodplain or wetland;

(3) Possible direct and adverse effects on the values for which a wild, scenic or recreational river was established;

(4) Environmental factors relevant to any proposed construction in or over navigable rivers, or to any proposed actions resulting in the discharge or dredge or fill materials into any waters of the U.S.;

(5) Actions having an impact on the continued use and viability of prime and unique farmlands;

(6) Possible effect of sites or properties included on, nominated for, or eligible for inclusion in the National Register of Historic Places, or on historical, architectural or archeological sites of national significance; and

(7) Possible adverse impacts on National Forest lands.

Preliminary Definition of Alternatives

One of the major purposes of an EIS is to define the reasonable alternatives to the proposed action and the environmental impacts to be expected from each reasonable alternative. As background for public comments and suggestions concerning reasonable alternatives to be considered, the broad classes of alternatives which have been tentatively identified are described briefly below:

A. If the Presidential Permit is Issued

Issuance of the Presidential permit by the DOE is one of the necessary steps leading to the construction of an electric transmission line which crosses the U.S. international border. Issuance of the permit indicates that there is no federal objection to the project, but does not mandate that the project be completed. Alternate means of completing the project would be assessed (see *Mitigating Measures* below).

B. If the Presidential Permit is Denied

Denial of the Presidential permit by the DOE could result in Puget Power relying on other means to achieve the stated benefits of the project. Alternative means of achieving these benefits could include:

(1) Installing larger size conductors on existing transmission lines to increase transfer capability and reduce electrical losses;

(2) Development and construction of new, non-conventional types of generating plants (e.g., solar or wind) closer to load centers to reduce the need for construction of conventional generating plants and to reduce electrical transmission losses;

(3) Load management by energy storage or conservation and/or replacement of some end uses of electricity by other sources of energy, which would reduce seasonal variations in load and total annual electrical energy requirements;

(4) Construction of other domestic transmission projects to interconnect with U.S. utilities; and

(5) Development of cogeneration and distributed small power projects throughout the state.

Mitigation Alternatives

The environmental impacts which would result from construction and operation of the proposed project would depend on the choice among a number of alternative possibilities as to where, when and how the project was constructed, as well as the choice of alternative maintenance and repair procedures during operation. Tentatively identified groups of alternatives for consideration in the EIS include: (a) Design, (b) route selection, (c) construction practices and (seasonal) timing, (d) rights-of-way clearing procedures, and (e) rights-of-way maintenance practices.

Comments and Scoping Meetings

The purpose of the scoping meetings is to obtain information from interested parties on the issues which should be addressed when preparing the EIS. These meetings will be conducted informally; however, a transcript of the meetings will be prepared. Parties who desire to present oral comments at a meeting should provide advanced notice to the DOE by January 24, 1990, if possible. The DOE has designated Ms. Constance L. Buckley, Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy, as presiding officer at these meetings. The presiding officer will establish the order of speakers and provide any additional procedures necessary for the conduct of the meetings.

Speakers will be allotted approximately 10 minutes for their oral statement. Should any speaker desire to provide for the record further information which cannot be presented within the designated time, such additional information may be submitted in writing by March 5, 1990. Written comments will be considered and given equal weight with oral comments. Meetings will commence at the times specified above and will continue until all those present who wish to speak have had an opportunity to do so.

A transcript of the scoping meetings will be retained by the DOE and, upon request, made available for inspection and copying at the Office of Fuels Programs, Room 3F–094, Forrestal Bldg., 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

Draft EIS Schedule and Availability

The draft EIS is scheduled for completion by September 1990, at which time its availability will be announced in the **Federal Register** and public comments again will be solicited.

Those individuals who do not wish to submit comments or suggestions at this time but who would like to receive a copy of the draft EIS for review and comment when it is issued should notify Mrs. Ellen Russell at the address given in the prior section.

One of the requirements placed on the applicant for a Presidential permit is the submission of an Environmental Report. This report is scheduled for completion by May 1990. This and other documents to be used in the preparation of the draft EIS will be made available for public inspection at several public libraries or reading rooms in the State of Washington. A notice of these locations will be provided in the **Federal Register** at a later date.

Issued in Washington, DC on December 18, 1989.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 89–30371 Filed 12–29–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RP90–63–000]

Bayou Interstate Pipeline System; Petition for Waiver

December 22, 1989.

Take notice that on December 18, 1989, Bayou Interstate Pipeline System (Bayou) filed a petition for a one-year waiver of the requirements of § 154.31 and § 385.2011 of the Commission's Regulations that Form No. 542–PGA, Purchased Gas Cost Adjustment Filing be submitted on electronic media.

Bayou states that it is a very small interstate pipeline with only 1.8 miles of 8-inch pipeline in service. Bayou states that it presently lacks the necessary resources to prepare the software and input the information necessary to comply with the electronic media

requirement. Bayou states that (1) it is evaluating a new computer system platform, (2) believes that the system installation will begin in 1990 and (3) all required filings will be made after 1990 on electronic media.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1989)]. All such motions or protests should be filed on or before January 3, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-30294 Filed 12-29-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-2-53-000]

K N Energy, Inc.; Tariff Filing

December 21, 1989.

Take notice that on December 1, 1989, K N Energy, Inc. (K N), filied Forty-Fifth Revised Sheet No. 4 and Twenty-Third Revised Sheet No. 4B of K N's FERC Gas Tariff, Third Revised Volume No. 1 and Second Revised Sheet No. 4, Original Volume No. 1-A.

K N states that the filing reflects a decrease in K N's rates charged to its jurisdictional customers pursuant to the Gas Research Institute (GRI) charge adjustment provision (section 21) of K N's FERC Gas Tariff, Original Volume No. 1-B. K N requests the Commission grant such waivers as it may deem necessary to permit the tariff sheet filed herewith to become effective January 1, 1990.

K N states that the filing and letter have been mailed to purchasers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 29, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-30367 Filed 12-29-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-97-003]

Pacific Gas and Electric Co. Filing

December 22, 1989.

Take notice that on December 21, 1989, Pacific Gas and Electric Company (PG&E) tendered for filing changes to the Western Systems Power Pool (WSPP) rate schedule. PG&E made this filing on behalf of itself and the sixteen other FERC jurisdictional members of the WSPP, with the support of the fourteen non-jurisdictional members. The services provided through the WSPP are flexibly priced under filed ceiling prices, and the present filing proposes to reduce the ceiling prices.

The filing also proposes an amendment to extend the Pool through May 1, 1992, or until the Commission acts on any request for a permanent pool. The filing indicates that the Members of WSPP who will want to request a permanent pool, commit to file an application for a permanent pool no later than January 1, 1992. If they do not file an application for a permanent pool by January 1, 1992, then the Members request that the WSPP should terminate as of March 1, 1992. The WSPP proposes to make the rate schedule change effective as of May 1, 1990.

Copies of this filing were served upon the WSPP Members and those parties which have intervened in previous WSPP dockets.

Any person desiring to be heard or to protest said application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests should be filed on or before January 22, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-30295 Filed 12-29-89; 8:45 am]

BILLING CODE 6701-01-M

[Project No. 10799-001]

Upper Mississippi Hydro Associates; Correcting Order and Dismissing Appeal

December 22, 1989.

By order issued October 30, 1989,[1] the Director, Division of Project Review (Director), issued a preliminary permit to Upper Mississippi Hydro Associates for Lock and Dam No. 8 Project No. 10799. That order indicated that no motions to intervene in the proceeding had been filed.

On November 27, 1989, the State of Wisconsin Department of Natural Resources (DNR) filed a timely appeal [2] of the Director's order, stating that the order incorrectly failed to indicate the DNR was an intervenor in the proceeding by virtue of its timely unopposed motion to intervene in the proceeding.

Review of the record in this proceeding indicates that DNR is an intervenor in the proceeding.[3] Accordingly, the order issuing the

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[1] 49 FERC 62,100 (1989).

[2] DNR captioned its filing a "Petition for Recognition." However, it is properly an appeal under 18 CFR 385.1902 (1989) and is being treated as such.

[3] The deadline for filing motions to intervene in the proceeding established in the public notice of the application for the preliminary permit for Project No. 10799 was October 20, 1989. DNR filed a motion to intervene in the proceeding on October 18, 1989, raising concerns regarding the potential adverse impacts construction and operation of the project could have on natural resources in the state. Since no opposition to the motion was received, DNR became an intervenor in the proceeding automatically pursuant to 18 CFR 385.214(c) (1989). As indicated in the revision to the order issuing the preliminary permit for Project No. 10799 set out in text hereof, comments such as those raised by DNR in this proceeding regarding actual construction and operation of the project are premature at the preliminary permit stage of the proceeding.

preliminary permit for Project No. 10799 is revised by modifying the paragraph referencing motions to intervene to read as follows:

Notice of the application was published. The comments of the intervenor in this proceeding (Wisconsin Department of Natural Resources) and the comments and protests filed by interested agencies and individuals have been fully considered in determining whether to issue this permit. Comments and objections related to the potential effects of actually constructing and operating the proposed project are premature at the preliminary permit stage and have therefore not been addressed in this proceeding.

In light of the above, DNR's appeal in this proceeding is moot and is hereby dismissed.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89-30296 Filed 12-29-89 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3702-7]

Prevention of Significant Deterioration of Air Quality (PSD) Final Determinations

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of final actions.

SUMMARY: The purpose of this notice is to announce that between May 1, 1989 and September 30, 1989, the United States Environmental Protection Agency (EPA), Region II Office, issued seven final determinations, the New York State Department of Environmental Conservation (NYSDEC) issued ten final determinations, and the New Jersey Department of Environmental Protection (NJDEP) issued one final determination pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations codified at 40 CFR 52.21. This notice also announces one final determination that was made by the EPA Region II Office on November 4, 1988 that was omitted from Region II's last Federal Register notice on final PSD actions.

DATES: The effective dates for the above determinations are delineated in the following chart (See **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Riva, Chief, Air and Environmental Applications Section, Permits Administration Branch, Office of Policy and Management, U.S. Environmental Protection Agency Region II Office, 26 Federal Plaza, Room 505, New York, New York 10278, (212) 264-4711.

SUPPLEMENTARY INFORMATION: Pursuant to the PSD regulations, the EPA Region II, the NYSDEC, and the NJDEP have made final determinations relative to the sources listed below:

Name of Company	Location	Project description	Reviewing agency	Final action	Date of final action
New York State Electric & Gas Corp	Somerset, New York.	Permit revision involving stack gas temperature measurement, location of SO_2 monitor, SO_2 emissions measurement, and amount of SO_2 diverted to the High Sulfur Test Center.	EPA Region II	Permit amendment	11/04/88
Empire Energy (Harrison Radiator)	Lockport, New York.	Construction of a 156 MW gas turbine project.	NYSDEC	Permit approval	05/02/89
Indeck Energy Services of Oswego Inc	Oswego, New York (adjacent to the Hammermill Paper Facility).	Construction of a 52 MW gas turbine project.	NYSDEC	Permit approval	05/08/89
Combustion Engineering-Huntington Limited Partnership.	Huntington, New York.	Construction of a 750 TPD mass burning resource recovery facility (known as the Huntington Resource Recovery Facility).	NYSDEC	Permit approval	08/02/89
North Jersey Energy Association	Sayreville, New Jersey.	Construction of a 304 MW cogeneration facility.	NJDEP	Permit approval	05/22/89
Puerto Rican Cement Co., Inc	San Juan, Puerto Rico.	Conversion of kiln #6 from wet process to dry process portland cement manufacturing facility.	EPA Region II	Non-Applicability determination.	06/06/89
Abbott Laboratories, Puerto Rico Operations.	Barceloneta, Puerto Rico.	Clarifications on existing PSD permit resulting in no change in emissions.	EPA Region II	Permit amendment	06/12/89
Hess Virgin Islands Corporation	St. Croix, U.S. Virgin Islands.	Extension of authority to commence construction by 18 months and revision of permit to include more stringent emission limits for PM and PM_{10}.	EPA Region II	Permit revision and extension.	06/16/89
Masonry Products, Virgin Islands Corporation.	St. Thomas, U.S. Virgin Islands.	Construction of an "El Jay 54" fine head cone crusher.	EPA Region II	Non-applicability determination.	06/19/89
Chevrolet-Pontiac Canada Group	Tonawanda, New York.	Replacement of existing coal fired boilers with two 122 MBtu/hr gas and oil fired units.	NYSDEC	Non-applicability determination.	06/21/89
Pfizer Pharmaceuticals, Inc	Barceloneta, Puerto Rico.	Construction of a new process/manufacturing facility in support of a new product line and upgrading certain existing product lines.	EPA Region II	Non-applicability determination.	06/29/89
Dunlop Tire Corporation	Tonawanda, New York.	Addition of a tread extruder line and limitations on hours of operation on entire plant.	NYSDEC	Non-applicability determination.	07/12/89
Genesee Leroy Stone Corporation	Dunkirk, New York.	Construction of a drum mix asphalt plant	NYSDEC	Non-applicability determination.	07/19/89
Virgin Islands Alumina, Inc	St. Croix, U.S. Virgin Islands.	Change of ownership from Martin Marietta Properties, Inc. to Virgin Islands Alumina, Inc.	EPA Region II	PSD permit amendment	08/08/89

Name of Company	Location	Project description	Reviewing agency	Final action	Date of final action
CIBRO Petroleum Products, Inc	Albany, New York.	Modification involving construction of a 3.7 MW gas turbine cogeneration unit, conversion of an existing boiler from full time to standby operation mode, and conversion of fuel used in another existing boiler from No. 6 fuel to liquid petroleum distillate.	NYSDEC	Non-applicability determination.	08/16/89
Sterling Power	Oneida, New York.	Construction of a 54 MW cogeneration facility.	NYSDEC	Non-applicability determination.	08/28/89
Medina Power Corporation	Yorkshire, New York.	Construction of a cogeneration facility consisting of 6 internal combustion engines with limitation on power production.	NYSDEC	Non-applicability determination.	08/30/89
General Energy Development, Inc	City of Albany, New York.	Construction of four engine/generator sets to convert landfill off gases to electrical energy.	NYSDEC	Non-applicability determination.	08/30/89
Westinghouse Electric Corporation (San Juan Resource Recovery Facility).	San Juan, Puerto Rico.	Construction of a 1041 TPD municipal solid waste resource recovery facility.	EPA Region II	Permit approval	09/25/89

This notice lists only the sources that have received final PSD determinations. Anyone who wishes to review these determinations and related materials should contact the following offices:

EPA Actions

United States Environmental Protection Agency, Region II Office, Permits Administration Branch, Room 505, 26 Federal Plaza, New York, New York 10278

NYSDEC Actions

New York State Department of Environmental Conservation, Division of Air Resources, Source Review and Regional Support Section, 50 Wolf Road, Albany, New York 12233–0001

NJDEP Actions

New Jersey Department of Environmental Protection, Division of Enviromental Quality, Bureau of Engineering and Technology, 401 East State Street, Trenton, New Jersey 08625

If available pursuant to the Consolidated Permit Regulations (40 CFR 124), judicial review of these determinations under section 307(b)(1) of the Clean Air Act (the Act) may be sought only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on which these determinations are published in the **Federal Register**. Under section 307(b)(2) of the Act, these determinations shall not be subject to alter judicial review in civil or criminal proceedings for enforcement.

Dated: December 11, 1989.

Constantine Sidamon-Eristoff,

Regional Administrator.

[FR Doc. 89–30352 Filed 12–29–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3701–8]

Open Meetings of the Negotiated Rulemaking Advisory Committee; Volatile Organic Chemical Equipment Leaks Rule

As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. Law 92–463), we are giving notice of open meetings of the Advisory Committee to negotiate a rule to control fugitive emissions of toxic volatile organic compounds (VOCs) from chemical equipment leaks.

The next meeting will be held on January 17, 1990 from 10:00 a.m. to 5:00 p.m., and on January 18, 1990 from 9:00 a.m. to 4:00 p.m., at the Pickett Inn, 2515 Meridian Street, Raleigh, NC. The purpose of the meeting is to continue to address the substantive issues.

The February meeting is scheduled for February 22 and 23, 1990 in Washington, DC. The March meeting is tentatively scheduled for March 27 and 28, 1990 in Raleigh, NC.

Persons needing further information on substantive aspects of the rule should call Robert Ajax, Office of Air Quality Planning and Standards, U.S. EPA, (919) 541–5579. Persons needing further information on committee arrangements or procedures should contact Deborah Dalton, Regulatory Negotiation Project, U.S. EPA, (202) 382–5495 or the Committee's facilitator, Philip Harter, (202) 887–1033.

Dated: December 26, 1989.

Paul Lapsley,

Director, Information and Regulatory Systems Division, Office of Policy, Planning and Evaluation.

[FR Doc. 89–30349 Filed 12–29–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3701–5]

Berrien Products Co., Inc. Site; Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for past response costs at the Berrien Products Company, Inc. Site, Nashville, Georgia, with W. Wesley Moore individually and as President of Berrien Products Company, Inc. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Carolyn McCall, Investigation Support Clerk, Site Investigation and Support Section, Waste Management Division, U.S. EPA, Region IV, 345 Courtland St., NE., Atlanta, GA 30365, 404/347–5059.

Written comments may be submitted to the person above by (30) days from date of publication.

Dated: December 21, 1989.

Greer C. Tidwell,

Regional Administrator.

[FR Doc. 89–30351 Filed 12–29–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL-3701-4]

Nashville Pesticide Site; Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for past response costs at the Nashville Pesticide Site, Nashville, Georgia, with W. Wesley Moore individually and as President of Berrien Products Company, Inc. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Carolyn McCall, Investigation Support Clerk, Site Investigation and Support Section, Waste Management Division, U.S. EPA, Region IV, 345 Courtland St., NE., Atlanta, GA 30365, 404/347-5059.

Written comments may be submitted to the person above by (30) days from date of publication.

Dated: December 21, 1989.

Greer C. Tidwell,

Regional Administrator.

[FR Doc. 89-30353 Filed 12-29-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 87-75; DA 89-1606]

Provision of Aeronautical Services via the INMARSAT System

AGENCY: Federal Communications Commission.

ACTION: Notice; extension of time.

SUMMARY: A Petition for Reconsideration on the Aeronautical Services via the INMARSAT was filed by British Telecommunications plc and the instant Order extends the time for filing responses to that Petition and replies to any responses received (54 FR 49796, December 1, 1989). The extension affords the public more time to deal with the complex issues presented.

DATES: Date for filing responses to the Petition is extended to January 8, 1990. Date for filing replies is extended to January 26, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: James Ball, (202) 632-7265.

SUPPLEMENTARY INFORMATION:

Extension of Time

Adopted: December 13, 1989.
Released: December 14, 1989.

By the Chief, Common Carrier Bureau:

1. American Mobile Satellite Corp. (AMSC) has filed a request for extension of time from December 18, 1989 to January 8, 1990 to file a response to the Petition for Reconsideration filed by British Telecommunications plc (BT) in the captioned matter. AMSC also requests that the time for filing of replies be extended to January 26, 1990. AMSC states that the issues involved are extremely complex and an extension of time is necessary to comprehensively respond to the issues raised by the BT petition and coordinate those responses with responses to similar issues raised by Aeronautical Radio, Inc. and Air Transport Assn. (collectively, ARINC) in a separate proceeding (ISP-90-002). AMSC states that it has contacted counsel for BT, ARINC, and Comsat, none of whom object to the request for extension.

2. Good cause has been shown for grant of the instant request. The complexity and importance of the issues raised by both BT's petition in this proceeding and by ARINC's petition in ISP-90-002 warrant the requested extension of time to prepare comprehensive and coordinated responses. We are simultaneously granting AMSC's request to extend the dates of filing responses to the ARINC petition.

3. Accordingly, *it is ordered* that the request of AMSC is granted, and the time for filing of responses to the Petition for Reconsideration filed by BT in the captioned matter is extended to January 8, 1990, and the time to reply is extended to January 26, 1990.

Federal Communications Commission.

Richard M. Firestone,

Chief, Common Carrier Bureau.

[FR Doc. 89-30097 Filed 12-29-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; United States Atlantic and Gulf Ports/Eastern Mediterranean and North African Freight Conference et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-009548-040

Title: United States Atlantic and Gulf Ports/Eastern Mediterranean and North African Freight Conference.

Parties:

Farrell Lines, Inc.
Lykes Bros. Steamship Co., Inc.
Pharos Lines S.A.
Waterman Steamship Corporation.

Synopsis: The proposed amendment provides that voting on individual commodity rates shall be by an affirmative vote of not less than two-thirds of the members present and entitled to vote. This does not apply to voting on tariff rules, charges, and surcharges. Further, the amendment corrects a clerical error.

Agreement No.: 202-010776-053

Title: Asia North America Eastbound Rate Agreement.

Parties:

American President Lines, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Liner Systems, Ltd.
Nippon Yusen Kaisha Line
Sea-Land Service, Inc.

Synopsis: The proposed modification amends Administrative Regulation 4(b) to require that changes to a party's named Trade Liaison Committee representatives requires 30 days notice to the Agreement office. The modification also makes other technical changes to the Agreement.

By Order of the Federal Maritime Commission.

Dated: December 26, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-30288 Filed 12-29-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Amcore Financial, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 22, 1990.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Amcore Financial, Inc., Rockford, Illinois; to acquire 100 percent of the voting shares of Central of Illinois, Inc., Sterling, Illinois, and thereby indirectly acquire The Central National Bank of Sterling, Sterling, Illinois, and Citizens State Bank of Mount Morris, Mount Morris, Illinois.

In connection with this application, Amcore Financial, Inc. has also applied to acquire Illini Insurance Company, Inc., Sterling, Illinois, and thereby engage in underwriting credit life, credit accident and health insurance in connection with extensions of credit made by subsidiaries of the bank holding company, pursuant to § 225.25(b)(8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 26, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-30284 Filed 12-29-89; 8:45 am]

BILLING CODE 6210-01-M

North American Bancorp, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 22, 1990.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. North American Bancorp, Inc., Pittsburgh, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of North Side Deposit Bank, Pittsburgh, Pennsylvania.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. SouthTrust Corporation, Birmingham, Alabama; to acquire 100 percent of the voting shares of First Capital Corporation (a savings and loan association), Raleigh, North Carolina. SouthTrust proposes to convert First Capital to a national banking association to be known as SouthTrust Bank of North Carolina, Raleigh, North Carolina.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Affiliated Bancorp, Inc., Watseka, Illinois; to acquire 100 percent of the voting shares of Bancorp of Northwestern Indiana, Inc., Goodland, Indiana, and thereby indirectly acquire Goodland State Bank, Goodland, Indiana.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Alton Bancshares, Inc., Grandin, Missouri; to become a bank holding company by acquiring 97.333 percent of the voting shares of Alton Bank, Alton, Missouri.

2. Nashoba Bancshares, Inc., Memphis, Tennessee; to become a bank holding company by acquiring Nashoba Bank, Memphis, Tennessee.

Board of Governors of the Federal Reserve System, December 26, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-30285 Filed 12-29-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board

of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 19, 1990.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. Gerard E. Schexnayder, Gretna, Louisiana; to acquire an additional 1.76 percent (totalling 11.26 percent) of the voting shares of Gulf South Bancshares, Inc., Gretna, Louisiana; and thereby indirectly acquire Gulf South Bank and Trust Company, Gretna, Louisiana.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. James E. Lindsey, Fayetteville, Arkansas; to acquire and additional 4.14 percent (totalling 28.37 percent) of the voting shares of Baxter County Bancshares, Inc., Mountain Home, Arkansas; and thereby indirectly acquire First Security Bank, Searcy, Arkansas.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Beverly Fingerhut Deikel, Shorewood, Minnesota; to acquire 33.03 percent of the voting shares of D.L. Bancshares, Inc., Detroit Lakes, Minnesota; and thereby indirectly acquire First National Bank, Detroit Lakes, Minnesota.

2. Ronald Fingerhut, Minneapolis, Minnesota; to acquire 33.03 percent of the voting shares of D.L. Bancshares, Inc., Detroit Lakes, Minnesota; and thereby indirectly acquire First National Bank, Detroit Lakes, Minnesota.

3. Allan Fingerhut, Golden Valley, Minnesota; to acquire 33.03 percent of the voting shares of D.L. Bancshares, Inc., Detroit Lakes, Minnesota; and thereby indirectly acquire First National Bank, Detroit Lakes, Minnesota.

Board of Governors of the Federal Reserve System, December 26, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-30286 Filed 12-29-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-89-2094]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

This Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 22, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Application for Project Mortgage Insurance (Rehabilitation).

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The Secretary of the Department of Housing and Urban Development is authorized to insure, upon application, mortgages on rental housing. This form is required to be completed by all applicants for mortgage insurance on properties to be rehabilitated at the initial stage of processing.

Form Number: HUD-9203-R.

Respondents: Business or Other For-Profit and Non-Profit Institutions.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per Response	=	Burden hours
HUD-9203-R	50		1		80		400

Total Estimated Burden Hours: 400.
Status: Extension.
Contact: William B. Harris, HUD, (202) 755–6223, John Allison, OMB, (202) 395–6880.

Dated: December 22, 1989.

[FR Doc. 89–30289 Filed 12–29–89; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–050–00–4351–10]

Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability and comment period.

SUMMARY: The Environmental Assessment (EA) for the interim management of the Desert Big Horn sheep in the Henry Mountain Resource Area will be available January 8, 1990 and will have a 30 day comment period. Some of the activities could occur within the following Wilderness Study Areas: Dirty Devil (UT–050–236A), French Spring/Happy Canyon (UT–050–236B), Fiddler Butte (UT–050–241), and Little Rockies (UT–050–247). For further information, contact Roy Edmonds at (801)–896–8221. Copies of the EA will be available at the Richfield District Office, 150 East 900 North, Richfield, Utah 84701.

Dated: December 21, 1989.

Jerry W. Goodman,

District Manager, Richfield District.

[FR Doc. 89–30325 Filed 12–29–89; 8:45 am]

BILLING CODE 9310–DQ–M

[NM–010–4130–09/GPO–0100]

Availability of the Record of Decision on the Molycorp Guadalupe Mountain Tailings Disposal Facility Environmental Impact Statement (EIS)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management, Albuquerque District announces the availability of the Record of Decision (ROD) for the Molycorp Guadalupe Mountain Tailings Disposal Facility EIS. The ROD announces BLM's decision to approve Molycorps Plan of Operations for a tailings facility on public lands near Questa, New Mexico, in BLM's Taos Resource Area.

FOR FURTHER INFORMATION CONTACT: Kent Hamilton, Bureau of Land Management, Albuquerque District Office, 435 Montano NE, Albuquerque, New Mexico 87107, Telephone commercial (505) 761–4546, FTS 474–4546.

SUPPLEMENTARY INFORMATION: Molycorp Inc., has applied for a 1230 acre millsite located on the Guadalupe Mountains near Questa, New Mexico, pursuant to 30 U.S.C. 42 (1976). The ROD grants Molycorp conditional approval to build the proposed tailings facility. The ROD identifies the stipulations Molycorp must adhere to. In addition, Molycorp must remove the contingencies identified in the ROD prior to beginning construction.

A copy of the ROD will be sent to all individuals, Government agencies, and groups who have expressed an interest in the project. In addition, copies can be obtained from the contact shown above.

Dated: December 22, 1989.

Larry L. Woodard,

State Director.

[FR Doc. 89–30368 Filed 12–29–89; 8:45 am]

BILLING CODE 4130–09–M

[AZ–020–00–4212–15; AZA 23648–02]

Realty Action; Proposed Classification of Public Lands for State Indemnity Selection, Arizona

1. The Arizona State Land Department has petitioned for classification and filed an application to acquire the public lands and minerals described in paragraph 2 below under the provisions of the Enabling Act of June 20, 1910 (36 Stat. 557), as amended. The state is entitled to compensation for lands taken by the Bureau of Reclamation for construction of the Central Arizona Project.

2. The Bureau of Land Management will examine the following lands to determine the suitability of disposal including any statutory constraints that would bar transfer to the state of Arizona. This proposed classification is pursuant to 43 Code of Federal Regulations subpart 2400 and section 7 of the Act of June 28, 1934.

Gila and Salt River Meridian, Arizona

Maricopa County

T. 2 N., R. 5 W.,
Sec. 2, lots 3 and 4, S½NW¼, SW¼ (surface only).
T. 2 N., R. 6 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½ (surface only).
T. 2 N., R. 7 W.,
Sec. 18, lots 1 to 4, incl., E½W½;
Sec. 19, lots 1 to 4, incl., E½, E½W½;
Sec. 30, lots 1 to 4, incl., E½, E½W½;
Sec. 31, E½ less mineral patent 456432;
Sec. 32, all (surface only).
T. 2 N., R. 8 W.,
Sec. 2, portions of lot 9, lots 10, 12 and 13, S½SE¼;
Sec. 11, lot 1, NE¼, NE¼NW¼, S½NW¼, S½;
Sec. 12, W½;
Sec. 13, N½, SE¼;
Sec. 14, N½, SW¼;
Sec. 15, all;
Sec. 17, N½;
Sec. 18, lots 1 and 2, NE¼, E½NW¼, NE¼NE¼SE¼;
Sec. 23, all;
Sec. 24, E½;
Sec. 25, E½.
T. 3 N., R. 5 W.,
Sec. 32, all (surface only);
Sec. 35, W½;
Sec. 36, all (surface only).
T. 3 N., R. 6 W.,
Sec. 36, all (surface only).
T. 4 N., R. 4 W.,
Sec. 36, all (surface only).

La Paz County

T. 3 N., R. 15 W.,
Sec. 2, lots 3 to 8, incl., lot 11, N½SW¼, SW¼SW¼ (surface only).

Pima County

T. 15 S., R. 15 E.,
Sec. 15, W½SW¼, SE¼SW¼.
Containing 11,371.24 acres.

3. The following listed corporations, agencies and individuals are holders of leases, permits, withdrawal applications or rights-of-way on the described public lands, as shown.

American Telephone and Telegraph Company.	PHX 083322
Arizona Department of Transportation.	AR 031625, AR 031626
Arizona Game and Fish Department.	719 (White Tank No. 2)
Arizona Public Service Company.	AR 010364, A 7973, A 18946, A 20277
Arizona Telephone Company.	A 10202
Bureau of Land Management.	A 23348
Bureau of Reclamation	A 10014, A 99?, AR 031307, A 19151
Burns International, Incorporated.	A 23329
City of Tucson	A 21902
Corps of Engineers	A 8122
Federal Aviation Administration.	A 18421
Joe Krelic	AMC 187760, AMC 187761
Maricopa County Flood Control District.	A 11866
Maricopa County Highway Department.	A 24079, A 23351
Mountain States Telephone and Telegragh Company.	A 13738
Southern Pacific Railroad Company.	PHX 086524

U.S. Sprint Communications Company.	A 22287
Vicksburg Land Associates	A 18959

State law and Arizona State Land Department Procedures provide for the offering to holders of Bureau of Land Management grazing permits or leases the first right to lease lands that are transferred to the state. This classification notice constitutes official notice to holders of grazing use authorizations from the Bureau of Land Management.

Grazing lessees	Allotment No.
Crowder-Weisser	3022
Freida Leavell	3058
Charles A. Miccia	3031
George Hazelton, Jim Carter, Edna Herrara	3015
Janet Pascoe	3017

Notices of Realty Action published in the Federal Register on the dates shown are hereby terminated: A 20346–L (July 14, 1988); A 23176 (February 2, 1988) and A 23254 (April 5, 1988).

4. Information concerning these lands and the proposed transfer may be obtained from Barbara Ahearn, Phoenix District Office, (602) 863–4464.

For a period of 60 days from the date of publication of this notice in the Federal Register, all persons who wish to submit comments may present their views in writing to the Phoenix District Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Any adverse comments will be evaluated by the State Director who will issue a notice of determination to proceed with, modify or cancel this action. In the absence of any action by the State Director, this classification action will become the final determination of the Department of the Interior.

As provided by title 43 Code of Federal Regulations, subpart 2462.1, public hearing may be scheduled by the State Director if he determines that sufficient public interest exists to warrant the time and expense of a hearing.

For a period of 45 days from the date of publication of this notice in the Federal Register, all persons asserting a claim to or interest in the described lands, other than holders of the leases, permits, withdrawal applications or rights-of-way listed, may file such claim with the Phoenix District Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027, with evidence that a copy thereof has been served on the Commissioner, Arizona State Land Department, 1616 West Adams, Phoenix, Arizona 85007.

Dated: December 21, 1989.

Charles R. Frost,

Acting District Manager.

[FR Doc. 89–30326 Filed 12–29–89; 8:45 am]

BILLING CODE 4310–32–M

[AZ–020–00–4212–13; AZA–24207]

Realty Action; Exchange of Public Land, Maricopa County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, exchange.

SUMMARY: All or part of the following described federal land is being considered for disposal via exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Base and Meridian, Maricopa County, Arizona

Township 5 North, Range 1 West

sec. 1, lots 1 to 7, incl., SW¼NE¼, S½NW¼, SW¼, W½SE¼;
sec. 3, SW¼SW¼SW¼;
sec. 4, SW¼, SW¼SW¼SE¼, W½SE¼S W½SE¼, E½SW¼SE¼SE¼, SE¼SE¼SE¼;
sec. 5, E½SE¼;
sec. 7, N½NE¼, N½S½NE¼, NE¼NW¼;
sec. 8, N½NE¼, E½W½E½SE¼SE¼; E½E½SE¼SE¼;
sec. 9, all;
sec. 10, all;
sec. 11, all;
sec. 14, lots 1 to 10, incl., NW¼NE¼, N½NW¼, NE¼SW¼, S½SW¼;
sec. 15, lots 1 to 10, incl., N½NE¼, SW¼NE¼, NW¼, N½SW¼;
sec. 22, N½, N½, SW¼NW¼.

Comprising 4,322.4 acres, more or less

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1, publication of this Notice will segregate the affected public land from appropriation under the public land laws, except exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect shall also exclude appropriation of the subject public land under the mining laws, subject to valid existing rights.

The segregation of the above-described land shall terminate upon publication in the Federal Register of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: December 26, 1989.

Charles R. Frost,

Acting District Manager.

[FR Doc. 89–30340 Filed 12–29–89; 8:45 am]

BILLING CODE 4310–32–M

Realty Action; Gliderport, Park County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action COC–49794, recreation and public purpose classification and application for lease and patent, for a Gliderport, Park County, Colorado.

SUMMARY: The following public lands are being examined for classification under the Recreation and Public Purpose Act (R&PP) of July 14, 1926, as amended, 43 U.S.C. 869 *et seq.*, and the regulations thereunder 43 CFR 2740. The public lands involved are segregated from the public land laws including the general mining laws, except for applications for R&PP lease and patent.

Sixth Principal Meridian, Colorado

T. 8 S., R. 76 W., sec. 27 E½SE¼, SW¼ SE¼, SE¼SW¼, (east of U.S. Highway 285); sec. 34, W½NE¼, NW¼ (east of U.S. Highway 285, and north of Park County Road No. 15, Elkhorn Road), NE¼SW¼ (north of Park County Road No. 15, Elkhorn Road), SE¼ (north of Park County Road No. 15, Elkhorn Road); containing 450 acres of public land.

DATES: Interested parties may submit comments on this action for a period of 45 days after publication of this notice. Comments should be directed to the District Manager, BLM, P.O. Box 2200, Canon City, CO 81215–2200. Objections will be reviewed and this realty action may be sustained, vacated, or modified. Unless vacated or modified, this realty action will become the final.

ADDRESSES: Bureau of Land Management, Royal Gorge Resource Area, P.O. Box 2200, Canon City, CO 81215-2200.

FOR FURTHER INFORMATION CONTACT: Mark Pyle, 719–275–0631.

SUPPLEMENTARY INFORMATION: The purpose of the classification and application for an R&PP lease and/or patent is to allow recreational development investment on public land by the Denver and South Park Soaring,

Inc., for use as a gliderport. The proposed classification would be consistent with BLM land use plans for the area.

Segregation will continue until the R&PP application is rejected or a patent is issued.

A grazing lease will have to be cancelled in part if the application is approved. There are existing mining claim conflicts. The mining claims may affect the lease, and if not resolved, a patent will not be granted. If issued, the lease will be subject to any valid existing rights.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 89-30327 Filed 12-29-89; 8:45 am]

BILLING CODE 9310-JB-M

[Application COC-49786]

Application for Federal Minerals

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty application COC-49786, proposed conveyance of federally owned mineral interests in Fremont County, Colorado and segregation from mineral entry.

SUMMARY: The following private lands have reserved Federal minerals for which application has been made by the surface owner, John Dorr, under section 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719:

New Mexico Principal Meridian, Colorado

T. 50 N., R. 11 E.
Section 11, SE¼SE¼
Section 12, S¼S½
Section 13, All
Section 14, E½, E½NW¼, NE¼SW¼
Section 23, NE¼, N½SE¼, SE¼SE¼
Section 24, W½, W½NE¼
T. 50 N., R. 12 E.
Tract 43
Containing 2240.21 acres

ADDRESS: Submit comments to District Manager, Bureau of Land Management, Canon City District Office, P.O. Box 2200, Canon City, Colorado 81215-2200.

FOR FURTHER INFORMATION CONTACT: Stu Parker at the above address or phone (719) 275-0631.

SUPPLEMENTARY INFORMATION: Publication of this notice segregates the subject lands from entry under the mining laws for two years or until patent issues.

Donnie R. Sparks,

District Manager.

[FR Doc. 89-30328 Filed 12-29-89; 8:45 am]

BILLING CODE 4310-JB-M

DEPARTMENT OF THE INTERIOR

[ID-013-90-4212-13; IDI-23538]

Realty Action; Exchange of Public and Private Lands, Washington and Elmore Counties, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—IDI-23538, exchange of public and private lands in Washington and Elmore Counties, Idaho.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716. In addition, the mineral interests on these lands, and the Bureau of Land Management's interest in Water Right No. 02-2209 on 3,023.80 acres will be included in the exchange:

Boise Meridian

T. 6 S., R. 10 E.,
Sec. 1, NE¼SW¼, S½SW¼, W½SE¼ and SE¼SE¼;
Sec. 2, SE¼SE¼;
Sec. 11, E½NE¼, SW¼NE¼ and S½;
Sec. 12;
Sec. 13, N½, N½SW¼; and SE¼;
Sec. 14, N½, NE¼SW¼ and N½SE¼;
Sec. 24, NE¼ and N½SE¼.
T. 6 S., R. 11 E.,
Sec. 6, lot 7;
Sec. 7;
Sec. 17, W½NW¼ and NW¼SW¼;
Sec. 18, lots 1 to 4, inclusive, NE¼, E½W½, N½SE¼ and SW¼SE¼;
Sec. 19, lots 1 to 3 inclusive.
Comprising 4,097.57 acres of public land.

In exchange for these lands, the United States will acquire the following described lands from The Nature Conservancy:

Boise Meridian

T. 13 N., R. 4 W.,
Sec. 18, lots 1 to 3 inclusive;
Sec. 19, lots 3 and 4, SE¼NE¼, SE¼NW¼, E½SW¼ and SE¼;
Sec. 20, SW¼NW¼, N½SW¼ and SW¼SW¼;
Sec. 29, W½NE¼ and NW¼NW¼;
Sec. 30, lots 1 and 2, NE¼, E½NW¼, N½SE¼ and SW¼SE¼.
T. 13 N., R. 5 W.,
Sec. 10, NW¼NE¼, S½NE¼, N½SE¼, SW¼SE¼, N½SE¼SE¼ and SW¼SE¼SE¼;
Sec. 11, N½SW¼SW¼, SE¼SW¼ and SE¼SE¼;
Sec. 12, NE¼SW¼, S½S½ and NW¼SE¼;
Sec. 13;
Sec. 14, N½NE¼, SE¼NE¼, E½E½NW¼, NE¼NE¼SW¼, S½N½SW¼ and S½SW¼;
Sec. 15, W½E½NE¼, W½NE¼, E½NW¼, NW¼NE¼SE¼, S½NE¼SE¼ and SE¼SE¼;
Sec. 22, NE¼NE¼;
Sec. 23, S½NE¼, NW¼ and N½S½;
Sec. 24, NW¼, N½SW¼ and W½SE¼;
Sec. 25, N½NE¼ and SE¼NE¼.
Comprising 3,891.74 acres of private land.

Mineral interests to be acquired with the offered land:

One-half interest in:

Boise Meridian

T. 13 N., R. 4 W.,
Sec. 30, lot 2.
T. 13 N., R. 5 W.,
Sec. 23, SW¼NE¼ and NE¼NW¼;
Sec. 24, NW¼, NE¼SW¼ and W½SE¼;
Sec. 25, N½NE¼ and SE¼NE¼.

One-quarter interest in:

Boise Meridian

T. 13 N., R. 5 W.,
Sec. 23, SE¼NE¼, S½NW¼ and N½S½;
Sec. 24, NW¼SW¼.

All minerals:

Boise Meridian

T. 13 N., R. 4 W.,
Sec. 19, lots 3 and 4, SE¼NW¼, E½SW¼ and SE¼;
Sec. 20, N½SW¼ and SW¼SW¼;
Sec. 29, W½NE¼ and NW¼NW¼;
Sec. 30, lot 1, NE¼, E½NW¼, N½SE¼ and SW¼SE¼.
T. 13 N., R. 5 W.,
Sec. 10, W½NE¼, SE¼NE¼, NE¼SE¼, N½SE¼SE¼ and SW¼SE¼SE¼;
Sec. 11, N½SW¼SW¼;
Sec. 13, SW¼NE¼, N½NW¼, SW¼NW¼, SW¼ and W½SE¼;
Sec. 14, N½NE¼, SE¼NE¼, E½E½NW¼, NE¼NE¼SW¼, S½N½SW¼ and S½SW¼;
Sec. 15, W½E½NE¼, NW¼NE¼SE¼, S½NE¼SE¼ and SE¼SE¼;
Sec. 22, NE¼NE¼;
Sec. 23, NW¼NW¼.

The purpose of this exchange is to acquire the non-Federal lands, which have high public values for wildlife habitat. These lands provide critical habitat for the Columbian sharp-tailed grouse and numerous other wildlife species. The acquisition of these lands has received significant support from the public, other Federal agencies, and some of the State and local government agencies. The public interest will be well served by completing this exchange.

Lands to be transferred from the United States will be subject to the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

Also subject to the following restrictive covenant:

1. The patentee, on behalf of themselves, their heirs, assigns and successors in interest, in consideration for receiving title to this property,

covenant and agree that the following described lands will not be used for irrigated farming:

Boise Meridian

T. 6 S., R. 10 E.,
Sec. 1, NE¼SW¼, NW¼SE¼ and SE¼ SE¼;
Sec. 13, N½SW¼ and W½SE¼
Sec. 14, NE¼SW¼ and N½SE¼;
Sec. 24, N½SE¼.
T. 6 S., R. 11 E.,
Sec. 6, lot 7;
Sec. 7, E½E½, NW¼NE¼ and NE¼NW¼;
Sec. 17, W½NW¼ and NW¼SW¼;
Sec. 18, NE¼SE¼ and SW¼SE¼;
Sec. 19, lots 1 to 3, inclusive.

Also subject to the following rights-of-way granted as shown:

IDI–8875
175' R/W for a powerline to Pacific Power and Light Company
IDBL–056096
60' R/W for a powerline to Idaho Power Company
IDI–017359
40' R/W for a powerline to Idaho Power Company
I–027316
Canal R/W to Glenns Ferry Land and Irrigation Company
IDI–016110
20' R/W for a powerline and a 330' by 270' substation to Idaho Power Company
IDI–12250
40' R/W for an irrigation pipeline to Walter Trail
IDI–20029
80' R/W for a county road to Glenns Ferry Highway District
IDI–14749
50' R/W for a powerline to Idaho Power Company
IDI–14868
50' R/W for a powerline to Idaho Power Company
IDI–0602
33' R/W for a natural gas pipeline to Chevron Pipe Line Company
IDI–14943
25' R/W for a natural gas pipeline to Northwest Pipeline
IDI–06421
50' R/W for a natural gas pipeline to Northwest Pipeline
IDI–2457
40' R/W for a powerline to Idaho Power Company
IDI–20976
10' R/W for a powerline to Idaho Power Company
IDI–16919
24' R/W for an access road and communication site to King Hill Irrigation District

DATES: The previously-described lands are hereby segregated from appropriation under the public land laws, including the mining and mineral leasing laws, for a period of two (2) years or until patent is issued, whichever comes first.

For a period of 45 days from the date of publication of this notice in the Federal Register interested parties may submit comments to the District Manager, Bureau of Land Management, at the address shown below.

ADDRESS: Bureau of Land Management, 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: For further information concerning the exchange, contact Delores Walker-Kelly at (208) 334–1582 or the above address. The Environmental Assessment/Land Report is also available for review at the Boise District Office at the address shown above.

SUPPLEMENTARY INFORMATION: The values of the lands to be exchanged are approximately equal; full equalization of values will be achieved by partially reimbursing The Nature Conservancy for some of the costs incurred in purchasing the private property

Objections to this Notice of Realty Action will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: December 20, 1989.

J. David Brunner,
District Manager.

[FR Doc. 89–30329 Filed 12–29–89; 8:45 am]
BILLING CODE 4310–66–M

[UT–020—00–4212–13; U–61697]

Salt Lake District; Realty Action; Exchange of Public and Private Lands in Box Elder County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described lands have been determined to be suitable of disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1716):

T. 13N., R. 9W., SLM
Section 3: Lots 1–4—164.20
T. 14N., R. 9W., SLM
Section 32: E½E½—160.00
Section 33: All—640.00
Section 34: SE¼SW¼, SE¼—200.00
The area described contains total acres of 1164.20.

In exchange for these lands, the United States will acquire the following described lands from Thomas E. Flinders:

T. 12N., R. 11W., SLM
Section 29: All (Excluding a strip of land 400 feet wide owned by Southern Pacific Transportation Company.)—577.42
T. 10N., R. 14W., SLM
Section 31: All—625.00
T. 9N., R. 15W., SLM
Section 13: SW¼NW¼, NW¼SW¼ (Excluding a parcel of land owned by Southern Pacific Transportation Company)—65.88
T. 7N., R. 18W., SLM
Section 3: Lots 1, 2, S½NE¼, N½SW¼ SW¼, SE¼SW¼SW¼, SE¼SW¼, SE¼ (Excluding a strip of land 400 feet wide owned by Southern Pacific Transportation Company.)—368.39
The area described contains total acres of 1636.73

The purpose of the exchange is to acquire non-federal lands which have high public historical values due to the existence of the abandoned Transcontinental Railroad Grade on the offered parcels. The values of the lands to be exchanged are approximately equal; full equalization of value will be achieved by payment to the United States by Thomas E. Flinders of funds in an amount not to exceed 25 percent of the total value of the lands to be transferred out of federal ownership.

The terms and conditions applicable to the exchange are: A reservation to the United States of a right-of-way for ditches or canals constructed by the Authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

The publication of this notice in the Federal Register will segregate the public lands described above for a period of 2 years from the date of first publication to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant.

The surface estimate only will be acquired by the United States on the offered lands.

In two years, there will be a reduction in the current level of grazing preference of 280 AUMs as a result of this exchange.

Detailed information concerning the exchange, including the environmental analysis and the record of public discussions, is available for review at the Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119.

Deane H. Zeller
Salt Lake District Manager.

[FR Doc. 89–30330 Filed 12–29–89; 8:45 am]
BILLING CODE 4310–DQ–M

[AZ-920-00-4130-02; AZ-930-00-4332-10]

Arizona; Public Review Period for USGS/USBM "Mineral Survey Reports" Prepared for BLM Wilderness Study Areas

December 20, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Arizona Bureau of Land Management (BLM), is requesting the public to review combined U.S. Geological Survey (USGS) and U.S. Bureau of Mines (USBM) "Mineral Survey Reports" which have been or will be completed for Wilderness Study Areas (WSAs) preliminarily recommended suitable for inclusion into the National Wilderness System. If the public identifies a new interpretation of the data presented in the reports or submits new minerals data for consideration, the Bureau of Land Management will send these comments to USGS/USBM.

No suitability recommendations will be changed by BLM based on the public comments or on the results of the USGS/USBM mineral survey reports. However, significant new findings will be documented in the BLM "Wilderness Study Report," which will also be reviewed by the Secretary, the President, and by Congress under the normal process before final decisions on wilderness are made. Copies of the WSA mineral survey reports listed below can be reviewed in BLM offices in Phoenix and Yuma, Arizona.

WSA No.	Name	USGS report No. (bull.)
AZ-020-095	Harquahala Mountains.	1701-C
AZ-020-054	Aubrey Peak	1701-D
AZ-020-059/068	Arrastra Mtn./ Peoples Canyon.	1701-E
AZ-020-172	Table Top Mountain.	1702-A
AZ-020-125	New Water Mountains.	1702-B
AZ-020-138	Signal Mountain	1702-C
AZ-050-053A	Muggins Mountains.	1702-D
AZ-020-203B/202	Baboquivari Peak and Coyote Mountains.	1702-E
AZ-020-142/144	Woolsey Peak	1702-F
AZ-020-128	Eagletail Mountains.	1702-G
AZ-020-197	Ragged Top	1702-H
AZ-020-160	Sierra Estrella	1702-I
AZ-050-023B	Trigo Mountains	1702-J
AZ-020-001A	Mount Wilson	1737-A

Reports available for review in BLM offices will not be available for sale or removal from those offices. Ordering and price information for these reports may be obtained at the following address: Books and Open-File Report Section, Western Distribution Branch, U.S. Geological Survey, Box 25425, Federal Center, Denver, Colorado 80225, (303) 236-7476

DATE: New information will be accepted on the reports enumerated in this notice until sixty days after the date of this Notice.

FOR FURTHER INFORMATION CONTACT: Larry P. Bauer, BLM, Arizona State Office, Division of Mineral Resources, P.O. Box 16563, Phoenix, AZ 85011 (602) 640-5507.

SUPPLEMENTARY INFORMATION: Section 603 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2785, directed the Secretary of the Interior to inventory lands having wilderness characteristics as described in the Wilderness Act of September 3, 1964, and from time to time report to the President his recommendations as to the suitability or nonsuitability of each area for preservation as wilderness. The USGS and USBM are charged with conducting mineral surveys for areas that have been preliminarily recommended suitable by BLM for inclusion into the wilderness system to determine the mineral values, if any, that may be present in such areas.

There are 2,140,468 acres of Wilderness Study Areas identified by BLM in Arizona of which 978,603 acres have been preliminarily recommended suitable. To date, 21 combined mineral survey reports have been completed by the USGS/USBM. Approximately 15 additional reports will be completed in Fiscal Year 1990.

To ensure that all available minerals data are considered by Congress prior to making its final wilderness suitability decisions, the BLM in Arizona is providing this public review and comment period. Any new data or new interpretations of data in the reports will be considered for its relevance and validity by the Bureau of Land Management. New minerals data or new intepretations of the minerals data will be forwarded to the USGS and USBM for their information.

The information requested from the public via this invitation is not limited to any specific energy or mineral resource. Comments should be provided in writing and should be as specific as possible and include:

1. The name and number of the subject Wilderness Study Area and USGS/USBM Mineral Survey Report.

2. Mineral(s) of interest.

3. A map or land description by legal subdivision of the public land surveys or protracted surveys showing the specific parcel(s) of concern within the subject Wilderness Study Area.

4. Information and documents that depict the new data or reinterpretation of data.

5. The name, address, and phone number of the person who may be contacted by technical personnel of the BLM, USGS, or USBM assigned to review the information.

Geologic maps, cross sections, drill hole records and sample analyses, etc., should be included. Published literature and reports may be cited. Each comment should be limited to a specific Wilderness Study Area. All information submitted and marked confidential will be treated as proprietary data and will not be released to the public without consent.

Lynn H. Engdahl

Acting State Director.

[FR Doc. 89-30331 Filed 12-29-89; 8:45 am]

BILLING CODE 4310-32-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 23, 1989. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by January 17, 1990.

Carol D. Shull,

Chief of Registration, National Register.

FLORIDA

Columbia County

Hotel Blanche, 212 N. Marion St., Lake City, 89002320

WEST VIRGINIA

Barbour County

Whitescarver Hall, Circle Dr. on the Alderson-Broaddus College campus, Philippi, 89002317

Doddridge County

Rockland, Address Restricted, Shepherdstown, 89002316

Fayette County

Hawkins, E.B., House, 120 Fayette Ave., Fayetteville, 89002319

Greenbrier County

Wylie, James, House, 208 E. Main St., White Sulphur Springs, 89002318

Monongalia County

Men's Hall (West Virginia University MPS), Prospect and High Sts., Morgantown, 89002309

WISCONSIN

Dane County

Belmont Hotel, 101 E. Mifflin St., Madison, 89002311

Milwaukee County

Buemming, Herman W., House, 1012 E. Pleasant St., Milwaukee, 89002315
Calkins, Elias A., Doublehouse, 1612-1614 E. Kane Pl., Milwaukee, 89002313
Desmond—Farnham—Hustis House, 1535 N. Marshall St., Milwaukee, 89002314
Oliver, Joseph B., House, 1516 E. Brady St., Milwaukee, 89002312

A proposed move is being considered for the following property:

Florida, Dade County, Opa-Locka Railroad Station, (Opa-Locka TR), 490 Ali Baba Ave., Opa-Locka 87000998.

[FR Doc. 89-30175 Filed 12-29-89; 8:45 am]

BILLING CODE 4310-70-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The NRC has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Revision.

2. Title of the information collection: Fracture Toughness Requirements For Protection Against Pressurized Thermal Shock Events, Proposed Amendment to 10 CFR 50.61.

3. The form number if applicable: Not applicable.

4. How often the collection is required: In the first year after the proposed rule becomes effective, one report is required from each of the 73 pressurized water reactor (PWR) licensees and another report is required from about 22 of the PWR licensees. In later years reports are required only if there is a significant change in the data that were the basis for the original report.

5. Who will be required or asked to report: The licensees of all pressurized water reactors.

6. An estimate of the number of respondents: 73 respondents.

7. An estimate of the total number of hours needed to complete the requirements or request: 24,160 hours

8. The average burden per respondent is about: 331 hours.

9. An indication of whether Section 3504(h), Pub. L. 96-511 applies: Not applicable.

10. *Abstract*: The NRC is preparing to amend it regulations (10 CFR 50.61) to change the procedure for calculating the reference temperature, RT_{PTS}, a measure of the level of embrittlement caused by neutron radiation, to reflect new information. Each licensee of a pressurized water reactor is required to recalculate RT_{PTS} for his reactor vessel, using the new procedure, and to compare the result to the screening criterion given in the pressurized thermal shock rule, 10 CFR 50.61. Licensees for the reactor vessels that may exceed the screening criterion before the end of licensed life (or the end of a license renewal period, if one has been requested) are also required to submit a plan for neutron flux reduction, if further flux reduction is practicable beyond that already undertaken.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW., Lower Level, Washington, DC.

Comments and questions should be directed by mail to the OMB reviewer as follows: Nicolas B. Garcia, Paperwork Reduction Project (3150-0011), Office of Management and Budget, Washington, DC 20503. Comments can also be submitted by telephone at (202) 395-3084.

NRC Clearance Officer is Brenda J. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 21st day of December, 1989.

For the Nuclear Regulatory Commission.

Joyce A. Amenta,

Designated Senior Official for Information Resources Management.

[FR Doc. 89-30342 Filed 12-29-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-1341]

Tennessee Valley Authority; Final Finding of No Significant Impact Regarding a Major License Amendment to Tennessee Valley Authority Edgemont Millsite Located Near Edgemont, SD

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of final finding of no significant impact.

1. Proposed Action

The proposed administrative action is to issue a major license amendment to Source and Byproduct Material License SUA-816. This amendment would authorize the release, for unrestricted use, of the former Tennessee Valley Authority (TVA) processing site.

2. Reasons for Final Finding of No Significant Impact

A final environmental statement was published as NUREG-0846. Within the body of this document many commitments on the decommissioning and decontamination of the processing site, as well as agreements concerning construction of the tailings disposal cell, were carried forward into Source and Byproduct Material License SUA-816. Construction and decontamination inspections conducted by the NRC's Uranium Recovery Field Office indicate that these commitments have been fulfilled. Furthermore, gamma surveys and soil radium analysis verify that appropriate regulatory limits have been achieved. Similarly, all other monitored environs have radiological levels that are within previously observed background concentrations.

The following statements support the final finding of no significant impact and summarize the conclusions resulting from the environmental assessment.

A. The ground-water monitoring program utilized at the site has supplied sufficient data to verify that background concentrations exist for radionuclides, and the majority of other monitored hazardous constituents. Three hazardous constituents are elevated only minimal amounts. Furthermore, tailings dewatering and relocation as well as precipitation have reduced the water stored in the alluvial materials and diluted the concentration of hazardous constituents. The data indicate that background levels of all hazardous constituents will soon be achieved.

B. Monitor wells at the site indicate that the saturated surface within the stratigraphic unit affected by tailings

disposal has been constantly declining. Due to this and other easily developed water sources, there is no reason to expect the alluvial materials to either yield sufficient quantities of water or be developed as a water resource.

C. Decommissioning and decontamination inspections indicate that the processing site has been decontaminated to appropriate regulatory limits. Furthermore, all byproduct materials have been isolated from the environment in the disposal cell.

D. All decontamination, decommissioning, construction, and vegetation requirements specified in the environmental statement have been accomplished by TVA and their contractors.

In accordance with 10 CFR part 51.33(a), the Director of the Uranium Recovery Field Office, made the determination to issue a final finding of no significant impact. This finding, together with the environmental documentation setting forth the basis for the findings, is available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, Colorado, and at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC. Concurrent with this finding, the staff will amend Source and Byproduct Material License SUA-816 authorizing release of the processing area for unrestricted use.

Dated at Denver, Colorado, this 16th day of December, 1989

For the Nuclear Regulatory Commission.

Ramon E. Hall,

Director, Uranium Recovery Field Office.

[FR Doc. 89-30344 Filed 12-29-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-356]

University of Illinois; Consideration of Application for Renewal of Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) is considering renewal of Facility License No. R-117, issued to the University of Illinois for operation of the Low Power Reactor Assembly (LOPRA) located on the University's campus in Urbana, Illinois.

The renewal would extend the expiration date of Facility License No. R-117 for twenty years from date of issuance, in accordance with the licensee's timely application for renewal dated September 29, 1989.

Prior to a decision to renew the license, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By February 1, 1990, the licensee may file a request for a hearing with respect to renewal of the subject facility license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary of the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the renewal under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, at 2120 L Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Seymour H. Weiss; petitioner's name and telephone number; date petition was mailed; University of Illinois; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and to Steven Veazie, Henry Administration Building, 506 South Wright Street, Urbana, Illinois 61801, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for renewal dated September 29, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, at 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 26th day of December 1989.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactor, Decommissioning and Environmental Project Directorate Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 89–30345 Filed 12–29–89; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Computer Matching and Privacy Protection Act of 1988; Records Used in Computer Matching Programs

AGENCY: Railroad Retirement Board (RRB).

ACTION: Notice of records used in computer matching programs notification to individuals who are receiving or have received benefits under the Railroad Unemployment Insurance Act or under the Railroad Retirement Act.

SUMMARY: As required by the Computer Matching and Privacy Protection Act of 1988, the RRB is issuing a public notice of its use and intent to use, in ongoing computer matching programs, certain information obtained from state agencies with respect to individuals who received benefits under the Railroad Unemployment Insurance Act or the Railroad Retirement Act. The information may consist of either (1) reports of unemployment or sickness payments made by the state for the same period that benefits were paid by the RRB or (2) wages and names and addresses of employers who reported wages to the state for the same period that benefits were paid by the RRB.

The purpose of this notice is to advise individuals applying for or receiving benefits under the Railroad Unemployment Insurance Act or the Railroad Retirement Act of the use made by the RRB of this information obtained from state agencies by means of a computer match.

DATES: Comments should be received on or before February 1, 1990.

ADDRESSES: Send comments to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Margaret C. Schmidt, Bureau of Unemployment and Sickness Insurance, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, telephone number (312) 751–4805.

SUPPLEMENTARY INFORMATION: Under certain circumstances, the Computer Matching and Privacy Protection Act of 1988, Pub. L. 100–503, requires a Federal agency participating in a computer matching program to publish a notice in the **Federal Register** regarding the establishment of that matching program. Such a notice must include information in the following first five categories:

Name of Participating Agencies: The Railroad Retirement Board and agencies of the following states, together with such other states with which the RRB may negotiate agreements in the future: California, Illinois, Indiana, Kansas, Missouri, New Jersey, New York, Pennsylvania, Texas, and Virginia.

Purpose of the Match: To identify individuals who have improperly collected benefits provided by the RRB while earning remuneration in non-railroad employment or while collecting unemployment or sickness benefits paid by a state agency.

Authority for Conducting the Match: 45 U.S.C. sections 231f(b) and 362(f) and 42 U.S.C. section 503(c)(1).

Categories of Records and Individuals Covered: All recipients of benefits under the Railroad Unemployment Insurance Act or under the Railroad Retirement Act during a given period who reside in the state with which the RRB has negotiated a matching program agreement. Records furnished the states are covered under Privacy Act system of records RRB–21, Railroad Unemployment and Sickness Insurance Benefit System and RRB–22, Railroad Retirement, Survivor, and Pensioner Benefit System.

Inclusive Dates of the Matching Program: Agreements with the individual states will run for either 12 or 18 months. The number of matches conducted with each state during the period of the match will vary from state to state, ranging from 2 to 6 depending on whether the agreement provides for matches to be conducted quarterly or every six months.

Procedure: The RRB will furnish the state agency a tape file. The data elements will consist of beneficiary identifying information, such as name and Social Security Number (SSN), as well as the overall period during which the individual received benefits under the Railroad Unemployment Insurance Act or under the Railroad Retirement Act. The state agency will match on the identifying information.

If the matching operation reveals that the individual who had received benefits under the Railroad Unemployment Insurance Act also received either unemployment or sickness insurance benefits from the state for any days in the period, the state agency would notify the RRB. Depending on arrangements made between the two jurisdictions, and, in the case of state sickness benefits on applicable state law, either the RRB or the state agency will attempt to recover the amount of the duplicate payments.

If the matching operation reveals that wages had been reported for the individual during the requested period, the state will notify the RRB of this fact and furnish a breakdown of the wages and the name and address of each employer who reported earnings for the individual. The RRB will then write each employer who reported earnings for the individual for the given period. Only if the employment is verified would the RRB take action to recover the payment or overpayment. If the RRB benefits had been paid under the Railroad Unemployment Insurance Act, recovery would be limited to payments made for days on which the individual was gainfully employed. If the RRB benefits had been paid under the Railroad Retirement Act, the amount of the overpayment, if any, would depend on any number of factors, such as the type of annuity received, the amount of the individual's yearly earnings, the amount of the individual's monthly earnings, and the individual's age. In some cases there would be no overpayment to be recovered.

Other information: The notice we are giving here is in addition to any individual notice.

A copy of this notice has been or will be furnished to both Houses of Congress and the Office of Management and Budget.

Dated: December 21, 1989.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89–30333 Filed 12–29–89; 8:45 am]

BILLING CODE 7905–90–M

Computer Matching and Privacy Protection Act of 1988; Records Used in Computer Matching Programs

AGENCY: Railroad Retirement Board (RRB).

ACTION: Notice of records used in computer matching programs notification to individuals who are receiving or have received benefits under the Railroad Retirement Act.

SUMMARY: As required by the Computer Matching and Privacy Protection Act of 1988, the RRB is issuing a public notice of its use and intent to use, in ongoing computer matching programs, certain information obtained from the Health Care Financing Agency (HCFA).

The purpose of this notice is to advise individuals applying for or receiving benefits under the Railroad Retirement Act of the use made by the RRB of this information obtained from HCFA by means of a computer match.

DATES: Comments should be received on or before February 1, 1990.

ADDRESSES: Send comments to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Kenneth C. Marz, Associate Director for Planning and Procedures, Bureau of Retirement Claims, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, telephone number (I312) 751–4715.

SUPPLEMENTARY INFORMATION: Under certain circumstances, the Computer Matching and Privacy Protection Act of 1988, Public Law 100–503, requires a Federal agency participating in a computer matching program to publish a notice in the **Federal Register** regarding the establishment of that matching program. Such a notice must include information in the following first five categories:

Name of Participating Agencies: The Railroad Retirement Board and the Health Care Financing Agency (HCFA).

Purpose of the Match: To identify RRB annuitants who are age 90 or over and who have not had any Medicare utilization during the past calendar year. The general purposes of the match are (1) to verify that these RRB annuitants are still alive and if alive, to determine whether the RRB should appoint a representative payee for them; (2) to identify instances when payments are being made to persons who because they are deceased are no longer entitled to receive them; (3) to recover any payments erroneously made; and (4) to identify instances of fraud, and where established and warranted, to initiate prosecution.

Authority for Conducting the Match: 45 U.S.C. section 231f(b)(7). This section requires that the Secretary of Health and Human Services provide information pertinent to the administration of the Railroad Retirement Act. The death of an annuitant under that Act is a terminating event.

Categories of Records and Individuals Covered: All annuitants under the Railroad Retirement Act who are age 90 or over and who have had no Medicare utilization during the previous calendar year. The RRB records used in this matching program are covered under Privacy Act system of records. RRB–22, Railroad Retirement, Survivor, and Pensioner Benefit System. The HCFA records used in this matching program are covered under Privacy Act system of records HCFA 09–70–0502, Health Insurance Master Record.

Inclusive Dates of the Matching Program: The life of this agreement is 18 months; the match will be conducted once during this period.

Procedure: HCFA will furnish the RRB with a computer tape of annuitants under the Railroad Retirement Act who, according to HCFA records, are age 90 or older and have no Medicare utilization during the previous calendar year. After excluding certain categories of individuals for whom no follow-up action will be taken, the RRB will contact the remaining identified individuals to determine whether they are still alive and if so to determine whether the RRB needs to appoint a representative payee to ensure that the benefits to which they are entitled are properly expended on their behalf. If the RRB establishes that an individual so identified in the match is deceased it will terminate the annuity, and if there are any benefits that were improperly paid, it will take action to recover them. In addition, if there is any indication of fraud, the RRB will evaluate whether prosecution should be initiated against the person or persons who acted fraudulently. No action will be taken with respect to the individuals excluded from the monitoring program.

The public information collection represented by the follow-up action for the individuals identified by the matching program was previously approved by the Office of Management and Budget (OMB 3220–0161). A request for reapproval of the public information collection will be made.

Other information: The notice we are giving here is in addition to any individual notice.

A copy of this notice has been or will be furnished to both Houses of Congress and the Office of Management and Budget.

Dated: December 21, 1989.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89–30334 Filed 12–29–89; 8:45 am]

BILLING CODE 7905–01–M

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C. 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning January 1, 1990, shall be at the rate of 26 cents.

In accordance with directions in sections 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning January 1, 1990, 32.6 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railraod Retirement Account and 67.4 percent of the taxes collected under such sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

By Authority of the Board.

Dated: December 20, 1989.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89–30332 Filed 12–29–89; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF STATE

[Public Notice CM–8/1337]

U.S. Organization for International Telegraph and Telephone Consultative Committee CCITT Study Group A; Meeting

The Department of State announces that Study Group A of the U.S. Organization for International Telegraph and Telephone Consultative Committee CCITT will meet January 23 and 24, 1990, commending at 9:30 a.m. in Room 1207, Department of State, 2201 C Street, NW., Washington, DC.

Study Group A deals with international telecommunications policy and services.

The agenda for January 23, morning session, (9:30–12:30 p.m.), will include a review of U.S. and foreign contributions for the upcoming meeting of Study Group I (Geneva, February 20–March 2, 1990) and formulation of the U.S. delegation; and the second session of U.S. preparatory activities dealing with the upcoming meeting of the ad hoc group for CCITT working methods and structure (Resolution No. 18), which will take place in Geneva, February 26–March 2, 1990.

The agenda for the afternoon session (1:30–4:30 p.m.) will commence with a discussion of Study Group III contributions that will be considered at the February 12–23, 1990, Geneva meeting, and the formulation of the U.S. delegation to that meeting; to be followed by a continuation of the morning discussion, if necessary, on the CCITT Plenary Assembly Resolution No. 18.

The agenda for January 24, (9:30–1:00 p.m.) will deal specifically with issues relating to the modernization and liberalization of the international leased circuits—Recommendations D.1, 2, 3 and 6.

Members of the general public may attend the meetings and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and individual building passes are required for each attendee. Entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl S. Barbely, State Department, Washington, DC.; telephone 647–5220. All attendees must use the C Street entrance to the building.

Dated: December 15, 1989.

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards; Chairman U.S. CCITT National Committee.

[FR Doc. 89–30335 Filed 12–29–89; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice 8/1336]

Overseas Security Advisory Council; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on Wednesday, January 31, 1990 at 8:30 a.m. at the Doubletree Marina Beach Hotel, Marina del Rey, California. Pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(4), it has been determined the meeting will be closed to the public. Matters relative to privileged commercial information will be discussed. The agenda calls for the discussion of private sector physical security policies, bomb threat statistics, and security programs at sensitive U.S. Government and private sector locations overseas.

For more information contact Marsha J. Thurman, Overseas Security Advisory Council, Department of State, Washington DC 20522–1003, phone: 202/663–0002.

Dated: December 14, 1989.

Clark Dittmer,

Director of the Diplomatic Security Service.

[FR Doc. 89–30336 Filed 12–29–89; 8:45 am]

BILLING CODE 4710–24–M

DEPARTMENT OF TRANSPORATION

Federal Highway Administration

Environmental Impact Statement, Winnebago County, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise that an environmental impact statement will be prepared for a proposed highway improvement in Winnebago County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Ms. Jaclyn Lawton, Environmental Coordinator, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin 53705–4905; Telephone (608) 264–5967.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation (WisDOT), is currently preparing an environmental impact statement for the construction of U.S. 10 on new location between U.S. Highways 45 and 41. The project begins at USH 45 and proceeds east approximately 3.3 miles to the USH 41–STH 441 interchange. The proposed project would consist of a four-lane, controlled-access, divided highway and would serve to reduce the heavy congestion and the accident potential along the present route.

Planning, environmental, and engineering studies are underway to develop transportation alternatives. The EIS will access the need, location, and environmental impacts of alternatives including: (1) *No-Build*—This alternative assumes the continued use of existing facilities with the maintenance necessary to ensure their use; (2) *Upgrade the Existing Facility*—This alternative would improve the safety and traffic-handling capability of the existing route; and (3) *Construction on New Alignment*—This alternative would involve construction on new location approximately 3.6 miles southerly of the present location.

Coordination & Scoping Process

Coordination activities have begun. Scoping meetings have been and will be held on an individual and/or group meeting basis. Agency coordination will be accomplished during these meetings. Questions and comments from individuals and agencies concerning this proposed action and the environmental impact statement should be directed to the FHWA at the address provided.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Coordination. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Robert W. Cooper,

District Engineer, Madison, Wisconsin.

[FR Doc. 89–30369 Filed 12–29–89; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Winnebago County, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent to withdraw.

SUMMARY: The FHWA is issuing this notice to advise that an environmental impact statement will not be prepared for the project entitled, "County Truck Highway Q, U.S.H. 41—U.S.H. 45, Winnebago County, Wisconsin." The original notice of intent to prepare an environmental impact statement was issued in the **Federal Register** February 5, 1987.

FOR FURTHER INFORMATION CONTACT: Jaclyn Lawton, Environmental Coordinator, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin 53705–4905, Telephone: (608) 264–5967 or FTS 364–5967.

Issued on: December 22, 1989.

Robert W. Cooper,

District Engineer, Madison, Wisconsin.

[FR Doc. 89–30370 Filed 12–29–89; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Yuba and Sutter Counties, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Yuba and Sutter Counties, California.

FOR FURTHER INFORMATION CONTACT: John R. Schultz, District Engineer, Federal Highway Administration, P.O. 1915, Sacramento, California 95812–1915, Telephone: (916) 551–1140.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation, will prepare an environmental impact statement on a proposal to construct a State Route 65 crossing of the Feather River, near the communities of Marysville and Yuba City.

The proposal will provide a direct connection between State Routes 70 and 99, and relieve mid-city congestion by removing through traffic from the existing 5th Street and 10th Street bridges which link the two cities.

Alternatives for this project presently consists of: (1) No project; (2) constructing one of two bypass alignments, located approximately 2.5 miles north of both business districts, or 3.0 miles south of the Yuba City central business district, and 2.3 miles south of the Marysville central business district.

An informal public meeting was held in Marysville on September 25, 1985 in order to introduce the proposal and to receive comment from interested parties.

Additional scoping meetings will be arranged with all responsible/cooperating agencies and with special interest groups upon request. In addition, at the time of Draft EIS circulation, a public hearing will be held. Public notice will be given as to the time and place of the hearing. To ensure that the full range of issues related to this proposed action are addressed, and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions should be directed to the FHWA at the address previously provided in this document.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal Programs and activities apply to this program.)

Issued on: December 19, 1989.

Susan E. Klekar,

District Engineer, Sacramento, California.

[FR Doc. 89–30337 Filed 12–29–89; 8:45 am]

BILLING CODE 4910–22–M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 1
Tuesday, January 2, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the January 2, 1990 regular meeting of the Farm Credit Administration Board (Board) will not be held and that a special meeting of the Board is scheduled for Tuesday, January 9, 1990, starting at 10:00 a.m. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Jeffrey P. Katz, Acting Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: December 27, 1989.

Jeffrey P. Katz,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 89–30385 Filed 12–27–89; 5:05 pm]

BILLING CODE 6705–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of January 2, 1990.

A closed meeting will be held on Wednesday, January 3, 1990, at 2:30 p.m. Open meetings will be held on Thursday, January 4, 1990, at 2:00 p.m. and on Friday, January 5, 1990, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Wednesday, January 3, 1990 at 2:30 p.m., will be:

Settlement of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Institution of administrative proceeding of an enforcement nature.
Subpoena enforcement action.
Settlement of injunctive action.
Consideration of *amicus* participation.

The subject matter of the open meeting scheduled for Thursday, January 4, 1990, at 2:00 p.m., will be:

The Commission will meet with representatives from the American Society of Corporate Secretaries to discuss various issues of securities regulation. The agenda will include topics such as the proposed Securities Law Enforcement Remedies Act of 1989, Section 16 rule proposals, and the Commission's proxy rules and other issues relating to proxy solicitations and voting. For further information, please contact Katherine Dixon at (202) 272–2573.

The subject matter of the open meeting scheduled for Friday, January 5, 1990, at 10:00 a.m., will be:

Consideration of whether to grant Delta Government Options Corp. registration as a clearing agency pursuant to Section 17A of the Securities Exchange Act of 1934. For further information, please contact Richard Konrath at (202) 272–2388 or Gordon K. Fuller at (202) 272–2414.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Amy Kroll at (202) 272–2200.

Dated: December 28, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–30393 Filed 12–28–89; 3:55 pm]

BILLING CODE 8010–01–M

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Meeting

AGENCY HOLDING THE MEETING: Uniformed Services University of the Health Sciences.

TIME AND DATE: 3:00 p.m., January 28, 1990.

PLACE: Fort Sam Houston, San Antonio, Texas.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

3:00 p.m. Meeting—Board of Regents
(1) Approval of Minutes—October 16, 1989; (2) Faculty Matters; (3) Report—Admissions; (4) Report—Associate Dean for Operations; (5) Report—Dean, Military Medical Education Institute; (6) Report—President, USUHS; (7) Report—Nursing School Task Force; (8) Report—Special Subcommittee; (9) Comments—Members, Board of Regents; (10) Comments—Chairman, Board of Regents
New Business

SCHEDULED MEETINGS: May 18, 1990.

CONTACT PERSON FOR MORE INFORMATION: Charles R. Mannix, Executive Secretary of the Board of Regents, 202/295–3028.

Dated: December 27, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–30384 Filed 12–27–89; 5:04 pm]

BILLING CODE 3810–01–M

Corrections

Federal Register
Vol. 55, No. 1
Tuesday, January 2, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL-3657-4]

RIN 2060-AC47

National Emission Standards for Hazardous Air Pollutants; Radionuclides

Correction

In rule document 89-26330 beginning on page 51654 in the issue of December 15, 1989, make the following correction:

On page 51694, in the first column, under **PART 61—[AMENDED]**, in amendatory instruction number 2., in the fifth line, "March 15, 1989" should read "March 15, 1990".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 700, 702, 750, 870, 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947

RIN 1029-AA53

Surface Coal Mining and Reclamation Operations; Exemption for Coal Extraction Incidental to the Extraction of Other Minerals

Correction

In rule document 89-29434 beginning on page 52092 in the issue of Wednesday, December 20, 1989, make the following corrections:

1. On page 52092, in the second column, in the first complete paragraph, in the fourth line, insert "Sess." following "1st".

2. On page 52094, in the 2nd column, in the 1st complete paragraph, in the 12th line, "of" should read "is".

3. On page 52095, in the third column, under *Section 702.5 Definitions*, in the second complete paragraph, in the fifth line, the second "the" should read "a".

4. On page 52096, in the 3rd column, in the 1st complete paragraph, in the 18th line, "is" should read "as".

5. On page 52098, in the third column, in the first complete paragraph, in the ninth line, "application" should read "applicant".

6. On the same page, in the same column, in eighth line from the bottom, "address" should read "addressess".

7. On page 52102, in the 2nd column, in the 13th line, "§ 702.702.16" should read "§ 702.16".

8. On page 52103, in the third column, in the fourth line "applicant can convince the regulatory" should read "authority that the estimates so".

9. On page 52118, in the 3rd column, under *F. Section 870.11(d) Applicability*, in the 16th line, "part 703" should read "part 702".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 545

Control, Custody, Care, Treatment and Instruction of Inmates; Inmate Financial Responsibility Program

Correction

In rule document 89-28156 beginning on page 49944 in the issue of Friday, December 1, 1989, make the following correction:

On page 49945, in the last line, "obligation" should read "obligations".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 594

[Docket No. 89-8; Notice 2]

RIN 2127-AC98

Schedule of Fees Authorized by the National Traffic and Motor Vehicle Safety Act

Correction

In rule document 89-23082 beginning on page 40100 in the issue of Friday, September 29, 1989, make the following correction:

§ 594.6 [Corrected]

On page 40107, in the third column, in the first line, "$225" should read "$255".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 90-01-EX-N01]

Receipt of Petition for Temporary Exemption From Standard No. 208

Correction

In notice document 89-29184 beginning on page 51546 in the issue of Friday, December 15, 1989, make the following correction:

On page 51547, in the first column, in the fourth complete paragraph, "January 4, 1990" should read "January 16, 1990".

BILLING CODE 1505-01-D

federal register

Tuesday
January 2, 1990

Part II

Environmental Protection Agency

Effluent Guidelines Plan; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL 3626-3]

Effluent Guidelines Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of plan to review and promulgate effluent guideline regulations.

SUMMARY: This notice announces the Agency's plans for reviewing and revising existing effluent guidelines and promulgating new effluent guidelines to implement section 304(m) of the Clean Water Act.

EFFECTIVE DATE: January 2, 1990.

ADDRESSES: On January 16, 1990, the public record for this notice will be available for review in EPA's Public Information Reference Unit, Room 2404 (Rear) (EPA Library), 401 M Street, SW., Washington, DC. The EPA public information regulation (40 CFR part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Eric Strassler, Industrial Technology Division (WH-552), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone 202-382-7120.

SUPPLEMENTARY INFORMATION:

I. Legal Authority

This notice is published under the authority of section 304(m) of the Clean Water Act, 33 U.S.C. 1314(m), which provides as follows:

Schedule for Review of Guidelines.

(1) Publication.—Within 12 months after the date of the enactment of the Water Quality Act of 1987, and biennially thereafter, the Administrator shall publish in the Federal Register a plan which shall—

(A) Establish a schedule for the annual review and revision of promulgated effluent guidelines, in accordance with subsection (b) of this section;

(B) Identify categories of sources discharging toxic or nonconventional pollutants for which guidelines under subsection (b)(2) of this section and section 306 have not previously been published; and

(C) Establish a schedule for promulgation of effluent guidelines for categories identified in subparagraph (B), under which promulgation of such guidelines shall be no later than 4 years after such date of enactment for categories identified in the first published plan or 3 years after the publication of the plan for categories identified in later published plans.

(2) Public Review.—The Administrator shall provide for public review and comment on the plan prior to final publication.

II. Introduction

A. Purpose of Today's Notice

Today's notice announces the Agency's first biennial plan for review and revision of existing effluent guidelines and promulgation of new effluent guidelines to implement section 304(m) of the Clean Water Act, as amended by the Water Quality Act of 1987 (Pub. L. 100-4).

EPA published a notice of its proposed plan to implement section 304(m) on August 25, 1988 (53 FR 32584). The Agency invited comment on the notice until October 25, 1988. Today's notice summarizes and addresses the major comments the Agency received.

B. Overview of Today's Notice

For the past 12 years, a consent decree settling litigation with the Natural Resources Defense Council (NRDC) and others, described below, has largely set the Agency's agenda for the development of effluent guidelines. With a few exceptions, EPA's efforts during this period have been directed to the completion of rulemaking activities prescribed by the consent decree. Although rulemaking for one industry category remains to be completed, the Agency now has largely discharged its responsibilities under the decree.

With the completion of these responsibilities, the Agency has turned to the planning process established by section 304(m) to set its agenda for future rulemaking. As is explained in more detail below, section 304(m) directs that EPA issue biennial plans for the promulgation of new effluent limitations guidelines and the review and revision of existing guidelines. Specifically, section 304(m) directs that Agency, every 2 years, to identify categories of sources discharging toxic or nonconventional pollutants for which effluent limitations guidelines have not

been published, to establish for each source identified a schedule for the promulgation of guidelines, and to establish schedules for the review and revision of previously promulgated guidelines.

There are many industry categories discharging toxic or nonconventional pollutants for which guidelines have not been published. EPA believes section 304(m) directs the Agency to select categories for promulgation of new guidelines and revision of existing guidelines and identify them in the first and subsequent 304(m) plans so that a phased, orderly process of effluent guideline rulemaking is established. This notice describes how the Agency has selected industry categories for which new guidelines will be promulgated and existing guidelines will be revised as a result of inclusion in today's first 304(m) plan.

The Agency is announcing in today's plan that it intends to promulgate new effluent limitations guidelines for five categories of dischargers; to revise existing guidelines for three categories; to review existing guidelines for three categories to determine whether they should be revised; and to study eight categories further to determine whether rulemaking should be initiated to establish guidelines covering them, as follows:

1. *New Guidelines*
   - Pesticide Chemicals
   - Offshore Oil and Gas Extraction
   - Hazardous Waste Treatment, Phase 1
   - Machinery Manufacturing and Rebuilding
   - Coastal Oil and Gas Extraction
2. *Revisions to Existing Guidelines*
   - Organic Chemicals, Plastics and Synthetic Fibers
   - Pharmaceutical Manufacturing
   - Pulp, Paper, and Paperboard
3. *Reviews of Existing Guidelines*
   - Petroleum Refining
   - Timber Products Processing
   - Textile Mills
4. *Studies*
   - Drum Reconditioning
   - Hospitals
   - Industrial Laundries
   - Paint Formulating
   - Solvent Recycling
   - Stripper Oil and Gas Extraction
   - Transportation Equipment Cleaning
   - Used Oil Reclamation and Re-Refining

In issuing future biennial plans, the Agency will ensure that appropriate rulemaking priorities are set, based on information regarding categories discharging toxic or nonconventional pollutants that is available at the time those plans are published.

III. Effluent Guidelines Planning: Legal Background

A. Requirements of Section 304(m)

Section 304(m), added by the Water Quality Act of 1987, establishes a new process for planning the development of effluent limitations guidelines and standards under the Clean Water Act. Section 304(m) directs the Agency, every 2 years, to publish in the **Federal Register** a plan that identifies "categories of sources discharging toxic or nonconventional pollutants" for which effluent limitation guidelines representing best available technology economically achievable (BAT) and new source performance standards (NSPS) have not previously been published. It also directs that the biennial plans include a schedule "for the annual review and revision of promulgated effluent guidelines * * *" Section 304(m) contains no requirement that the Agency identify any specific sources of toxic or nonconventional pollutants in the first or subsequent plans, nor does it contain criteria for determining when to include any categories in a biennial plan.

Under section 304(m), the Agency's biennial plans are to "establish a schedule" for the promulgation of new guidelines and standards covering categories discharging toxic or nonconventional pollutants. For categories identified in the first plan, the schedule is to call for the promulgation of new guidelines by February 1991, 4 years after the date of enactment of the Water Quality Act. For categories identified in biennial plans after the first plan, the schedule is to call for promulgation of guidelines and standards for identified categories no later than 3 years after publication of the plan. [As the first 304(m) plan was to be published within 1 year after the date of enactment, the promulgation of guidelines for categories identified in the first plan also falls 3 years after publication of the plan.] Section 304(m) does not specify any deadline for the promulgation of revised guidelines under the "schedule[s] for the annual review and revision of promulgated effluent guidelines" required by section 304(m)(1)(A).

One commenter, the Natural Resources Defense Council (NRDC), contends that section 304(m) requires EPA, in its first biennial plan, to identify all categories of sources discharging more than trivial amounts of toxic or nonconventional pollutants for which guidelines have not previously been published. NRDC comments enumerated at least 70 such categories and asserted that section 304(m) requires EPA to promulgate guidelines for all of them by February 1991. NRDC has filed suit against the Agency, alleging violation of section 304(m) and other statutory authorities requiring promulgation of effluent limitations guidelines, new source performance standards and pretreatment standards (*NRDC and Public Citizen, Inc.* v. *Reilly*, D.D.C. No. 89–2980).

EPA disagrees with NRDC's reading of the statute. EPA interprets section 304(m) as directing that the Agency set priorities for the promulgation of new guidelines and revision of existing guidelines and establish a phased, orderly planning process that increases the pace of the Agency's effluent guidelines rulemaking. The Agency's interpretation is based on the statutory language, the legislative history of section 304(m) as a whole, the prior history of the guidelines development program, and the Agency's judgment as to how the policies of the Clean Water Act in general and section 304(m) in particular can best be effectuated.

Since guidelines under the Clean Water Act were first issued in 1974, EPA has promulgated effluent guidelines and standards covering 51 categories of dischargers. Since 1976, the Agency has focused its efforts to develop regulations covering toxic and nonconventional pollutants on 34 industry categories that were listed in a consent decree entered into that year with NRDC and others. [*NRDC* v. *Train*, 8 E.R.C. 2120 (D.D.C. 1976), as modified.] The Agency is now completing the last of the rulemaking projects specified in that consent decree 13 years ago. Many of the regulations covering industries discharging toxic and nonconventional pollutants took 5 years or more for the Agency to develop. Section 304(m) should be construed in light of this background. [See Sutherland, *Statutes and Statutory Construction*, sec. 48.03 (N. Singer 4th Ed. 1984).]

The statutory requirement for biennial identification of sources, coupled with the three-year statutory schedule for the issuance of new guidelines for identified sources, indicates that Congress did not intend to require the Agency to identify all categories of sources discharging toxic or nonconventional pollutants in the first plan. The inclusion of all industries discharging toxic or nonconventional pollutants in the first 304(m) plan would give rise to a duty to issue guidelines for each of them by February, 1991. Had Congress intended such a dramatic increase in the pace of the guidelines program, it is reasonable to expect that this would have been

made clear on the face of the statute and in the legislative history.

To the contrary, the Conference Committee report on the Water Quality Act devotes little attention to section 304(m), explaining it briefly as "providing for development of a plan which will include *a schedule for periodic review and revision of promulgated effluent guidelines*, categorization of toxic and nonconventional pollutant sources for which effluent limitations guidelines and new source performance standards have not been established, and *a schedule for promulgation of effluent limitations for such categories of sources.*" [Conference Report No. 99–1004 (99th Congress, 2nd Session, 1986), pp. 129–30, emphasis added]. As sec. 304(m) contains no deadline for the promulgation of revised guidelines after review, this language confirms that the Agency, in its biennial plans, may set an appropriate pace for publishing revisions to existing guidelines. EPA believes this language similarly reflects Congress' intent that EPA biennially set priorities for the promulgation of new guidelines. Otherwise—in light of the command of Section 304(m)(1)(C) that the deadline for issuance of new guidelines shall be "3 years after the publication of the plan"—the Committee Report would have made it clear that Congress expected EPA to issue guidelines for all categories discharging toxic or nonconventional pollutants by February 1991.

Finally, if all categories discharging toxic or nonconventional pollutants were included in the first 304(m) plan, the biennial planning process thereafter would be limited to examination and listing of a handful of new industries or industries, if any, for which new information regarding the discharge of toxic or nonconventional pollutants comes to light. There is no indication that Congress intended the Agency's biennial guidelines planning to be such a narrow exercise.

The legislative history of section 304(m) reflects that Congress was aware specifically of the rate at which the Agency had promulgated guidelines since 1977. [See Senate Report No. 99–50 (99th Congress, 1st Session, 1985), p. 3.] To be sure, Congress expressed frustration with "the slow pace in which these regulations are promulgated * * *" *Id.* Yet, at the time it enacted the Water Quality Act of 1987, Congress did not repeal sections 304(b)(2)(B) and 306, which set out the detailed technical, economic and environmental factors that the Agency must study—and for which it must create an adequate rulemaking record—in promulgating BAT guidelines and new source performance standards. Nor did Congress dramatically increase appropriations to the Agency to the level that would be required for the Agency to issue new guidelines by February 1991 for all categories discharging toxic or nonconventional pollutants. Even if the available resources were unlimited, in the Agency's judgment insufficient data and information exist—and cannot be gathered—to issue guidelines for all such categories by February 1991. Viewing the enactment of section 304(m) in this context lends further support to the Agency's view that Congress intended EPA to establish a continuing planning process under which EPA is to increase the pace of guidelines development and set priorities for the issuance of new and revised guidelines in a manner that is consistent with the other requirements of the Clean Water Act.

Accordingly, EPA interprets section 304(m) as directing the Agency to increase the level of effort afforded to the development of effluent limitations guidelines, but to do so through a phased, orderly process that ensures adequate consideration of the technical, economic and environmental factors required by section 304(b)(2)(B) and 306. To implement this interpretation, EPA has developed a set of criteria to set priorities in identifying industries for development of new or revised effluent limitations guidelines and standards. The criteria emphasize the presence and quantity of toxic and nonconventional pollutants in the discharges to waters of the United States, and the potential impact of those discharges on the environment. The criteria also consider the utility of national guidelines covering categories of dischargers under consideration and the presence of specific legislative or judicial mandates to issue guidelines for particular categories. The Agency has applied these criteria to select categories of dischargers for which new and revised guidelines will be prepared.

In today's notice, EPA is announcing its first biennial plan under section 304(m). The plan not only implements section 304(m), but also constitutes the Agency's approach to implementation of other statutory authorities relating to the issuance of effluent guidelines (including sections 304(b), 306 and 307). Under this plan, the Agency intends to promulgate new effluent limitations guidelines for five categories of dischargers; to revise existing guidelines for three categories; to study eight categories further to determine whether rulemaking should be initiated to establish guidelines covering them; and to review existing guidelines for three categories to determine whether they should be revised. This plan reflects a significant increase in the current level of effort of the guidelines program, which in the recent past has been devoted largely to completing the guidelines required by the NRDC consent decree and obtaining the information necessary to establish priorities for future guidelines development.

For each category identified, EPA has established promulgation schedules that the Agency currently believes are attainable based on its past experience in developing effluent limitations guidelines and current information about those categories, even though the schedules extend beyond February 1991. In issuing future biennial plans, the Agency will ensure that appropriate rulemaking priorities are set, based on information regarding categories discharging toxic or nonconventional pollutants that is available at the time those plans are published.

B. Related Provisions of the Clean Water Act

The Federal Water Pollution Control Act (FWPCA) of 1972 (Pub. L. 92–500, Oct. 18, 1972) established a program to restore and maintain the integrity of the nation's waters. To implement the Act, Congress directed EPA to issue effluent limitation guidelines, pretreatment standards, and new source performance standards for industrial dischargers. These regulations were to be based principally on the degree of effluent reduction attainable through the application of control technologies. The approach includes limitations based on Best Practicable Control Technology (BPT), Best Available Technology Economically Achievable (BAT), New Source Performance Standards (NSPS), Pretreatment Standards for Existing Sources (PSES), and Pretreatment Standards for New Sources (PSNS).

The limitations and standards are implemented in permits issued through the National Pollutant Discharge Elimination System (NPDES) pursuant to section 402 of the Act for point sources discharging directly to the waters of the United States, with the pretreatment standards directly applicable to industrial users discharging to publicly owned treatment works (POTWs). Although the limitations are based on the performance capability of particular control technologies, including in some cases in process controls, dischargers may meet their requirements using

whatever combination of control methods they choose, such as manufacturing process or equipment changes, product substitution, and water re-use and recycling.

The 1977 amendments to the FWPCA, known as the Clean Water Act Amendments (Pub. L. 95–217, Dec. 27, 1977) (CWA), added an additional level of control for conventional pollutants such as biochemical oxygen demand (*BOD*) and total suspended solids (*TSS*), and stressed additional control of 65 toxic compounds or classes of compounds (from which EPA later developed a list of 126 specific "priority pollutants"). To further strengthen the toxics control program, section 304(e), added by the 1977 amendments, authorized the Administrator to establish management practices to control toxic and hazardous pollutants in plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage.

The effluent guidelines and standards promulgated by EPA reflect the several levels of regulatory stringency specified in the Act, and they also focus on different types of pollutants. Section 301(b)(1)(A) directs the achievement of effluent limitations requiring application of BPT. Effluent limitations based on BPT are generally to represent the average of the best treatment technology performance for an industrial category. For conventional pollutants listed under section 304(a)(4), section 301(b)(2)(E) directs the achievement of effluent limitations based on the performance of best conventional pollutant control technology (BCT). The Act requires that BCT limitations be established in light of a two-part "cost-reasonableness" test. The test, which assesses the relative costs of conventional pollutant removals, is described in detail in the **Federal Register** notice promulgating the final BCT rule on July 9, 1986 (51 FR 24974).

Both BPT and BCT regulations apply only to direct dischargers, i.e., those facilities that discharge directly into waters of the United States. In general, regulations are not developed to control conventional pollutants discharged by indirect dischargers (i.e., those facilities that discharge into POTWs) because the POTWs normally provide adequate treatment of these types of pollutants or they can be adequately controlled through local pretreatment limits.

For the toxic pollutants listed in section 307(a), and for nonconventional pollutants, sections 301(b)(2) (A), (C), (D) and (F) directed the achievement of effluent limitations requiring application of BAT. Effluent limitations based on BAT are to represent at a minimum the best control technology performance in the industrial category that is technologically and economically achievable.

In addition to limitations for existing direct dischargers, EPA also establishes NSPS under section 306 of the Act, based on the best available demonstrated control technology, processes operating methods or other alternatives. NSPS apply to new direct dischargers. The NSPS limitations are to be as stringent, or more stringent than BAT limitations for existing sources within the industry category or subcategory.

To ensure that effluent guidelines remain current with the state of the industry and with available control technologies, section 304(b) of the Act provides that EPA shall revise the effluent guidelines at least annually if appropriate. In addition, section 301(d) provides that EPA shall review and if appropriate, revise any effluent limitation required by section 301(b)(2).

Section 402 of the CWA provides for the issuance of permits to direct dischargers under NPDES. These permits, which are required by section 301, are issued either by EPA or by a State agency approved to administer the NPDES program. Individual NPDES permits must incorporate applicable technology-based limitations contained in guidelines and standards for the industrial category in question. Where EPA has not promulgated applicable technology-based effluent guidelines for an industry, section 402(a)(1)(B) provides that the permit must incorporate such conditions as the Administrator determines are necessary to carry out the provisions of the Act. In other words, the permit writer uses best professional judgment (BPJ) to establish limitations for the dischargers.

Indirect dischargers are regulated by the general pretreatment regulations (40 CFR part 403) and categorical pretreatment standards for new and existing sources (PSNS and PSES) covering specific industrial categories. These categorical standards under sections 307 (b) and (c) appy to the discharge of pollutants from non-domestic sources which interfere with or pass through POTWs, and are enforced by POTWs or by State or Federal authorities. The categorical pretreatment standards for existing sources covering specific industries are generally analogous to the BAT limitations imposed on direct dischargers. The standards for new sources are generally analogous to NSPS.

IV. Effluent Guidelines—Program Background

After enactment of the CWA in 1972, EPA began the development of effluent guidelines, concentrating on the industry categories listed specifically in section 306(b)(1)(A) as sources for which new source performance standards were to be developed. The first round of guidelines, promulgated in 1974 and 1975, typically contained BPT, BAT, NSPS, PSES and PSNS limits for conventional pollutants, chemical oxygen demand (*COD*), phenols and several metals for 28 industry categories. (The guidelines for some industry categories did not include BAT or pretreatment limits.)

In 1976, EPA entered into a consent decree with NRDC and others, bringing to a conclusion four separate actions challenging EPA's regulation of the discharges of toxic pollutants into the waters of the United States. Under that consent decree, the Agency was to initiate rulemaking proceedings to develop BAT guidelines, new source performance standards and pretreatment standards covering 34 specified point source categories in accordance with an agreed upon schedule. The guidelines were to control any of 65 toxic pollutants or classes of pollutants, listed in the consent decree, that were found in the discharges of the covered industries. The 1977 amendments to sections 301 and 307 of the Clean Water Act codified many of these provisions of the consent decree.

The consent decree has largely set the rulemaking agenda in the effluent guidelines development program. In recent years most of the program's resources have been devoted to completion of regulations required by the decree. The Agency also has responded to emerging problems, such as new findings on discharges from the pulp and paper industry, and findings on indirect dischargers, as described in the *Domestic Sewage Study*. Most recently, the Agency has engaged in a process of sampling and data collection to implement section 304(m) and establish a plan of action for the future of the guidelines program.

The requirements of the consent decree and the 1977 amendments created substantial regulatory challenges for the Agency. EPA found that a complex industry characterization process was necessary to support the development of BAT rules. The economic achievability analyses required a detailed demographic picture of each industry on which to assess the impacts of treatment technology

alternatives. Considerable time and resources were necessary to conduct surveys and studies to compile a comprehensive profile for each industry. The preproposed rule phase of an effluent guideline project typically required about 3 years. For many of the proposed rules, the Agency received extensive public comments, and additional data collections were needed for some industries. The period between proposed and final rulemaking notices was often 2 years or more.

In addition, there were no proven analytical methods for the detection and/or quantification of many of the 65 toxic pollutants that EPA was to control. A great deal of time was required to develop methods that would be reliable for wastewaters with a wide variety of characteristics. The Agency also was faced with responding to legal challenges to many of its first-round guidelines.

These factors slowed the Agency's progress in developing regulations under the consent decree. In 1979, the decree was modified to include a revised schedule for promulgation of new or revised BAT regulations, new source performance standards and pretreatment standards for the covered industries (12 E.R.C. 1833, D.D.C. 1979). Because of the complexity of the task, EPA still was not able to meet all of the modified deadlines, and several times obtained court approval for extensions. The Agency promulgated regulations for all but one of the covered industries between 1979 and 1987. EPA is now completing the last consent decree rulemaking project, covering the Pesticides industry.

In the course of preparing 51 effluent guidelines, EPA has accumulated substantial expertise in the steps necessary to promulgate a defensible regulation establishing effluent limitations guidelines and standards. Based on this expertise, the schedules for promulgation of new or revised guidelines that are set out in today's notice reflect EPA's best current estimate of the time necessary to promulgate technically and scientifically adequate regulations for each category. This section of the notice summarizes the various tasks which the Agency must complete in a typical effluent guideline rulemaking.

Initially, the Agency must establish the scope of the rulemaking and the dimensions of the rulemaking project by defining the industry category. For some industry categories, such as the Inorganic Chemicals Manufacturing category (40 CFR part 415), the Agency was able to use readily available tools such as the Standard Industrial Classification (SIC) Manual in defining the category to be addressed. For others, such as the Machinery Manufacturing and Rebuilding category ("MM&R"), the process has been more difficult. In defining the MM&R category, the Agency first examined what industrial activities had not been regulated in the "Machinery and Mechanical Products" category as identified in the 1976 consent decree. From that, the Agency identified approximately 89,000 facilities that manufacture or rebuild machinery but that were not covered by previously promulgated guidelines. The Agency then examined whether the Metal Finishing category (40 CFR part 433) would cover these establishments and found that it did cover approximately 13,000 of the 89,000 identified. EPA then examined the products manufactured and processes employed by the remaining 76,000 facilities and by facilities with related processes and facilities. The Agency was unable, from a process or practical basis, to differentiate between manufacturing, maintenance and rebuilding. Accordingly, EPA determined these three classifications should be evaluated together.

Next, the Agency determines the size of the category as it has been defined, using all available sources. Given the diversity of regulatory categories, no one source suffices to establish size. At various times, EPA has used one or more of the following sources: standard published sources, information available through trade associations, data purchased from the Dun and Bradstreet, Inc. data base, other publicly available data bases, census data, other U.S. Government information and any available EPA data base. For MM&R, for example, the Agency found that its original estimate of 89,000 facilities had included only the larger manufacturing facilities. The Agency currently believes this category includes over 278,000 facilities with 10 or more employees, and totals approximately 970,000 facilities. If a category is very large, the Agency will determine whether it can be broken down into appropriate categories or subcategories. If more than one subcategory can be identified, the Agency may need to establish priorities for regulation.

Regulatory information about industry categories is obtained largely through survey questionnaires and on-site wastewater sampling. Survey questionnaires solicit detailed information necessary to assess the statutory rulemaking factors (particularly technological and economic achievability of available controls), water use, production processes, and wastewater treatment and disposal practices. A significant portion of the Agency's questionnaires typically seek information necessary to assess economic achievability.

If the survey questionnaire is expected to go to more than nine entities, clearance from the Office of Management and Budget (OMB) is required under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). Typically, the Agency will construct a questionnaire and obtain public reaction on it. Often the Agency will pre-test the questionnaire by having one or more facilities complete the draft form. Formal submission to OMB will follow completion of these activities. OMB review can take up to 90 days from official submission of the questionnaire.

The Agency typically requests industry responses to survey questionnaires within 30 to 60 days of receipt. While most recipients do respond within the requested time period, a certain number of questionnaires require follow up activity, ranging from telephone calls to enforcement actions under section 308 of the Clean Water Act. For example, for a questionnaire supporting the current Pesticide Chemicals rulemaking effort, the Agency received the last response one full year after the questionnaire was distributed. In addition, the Agency spends considerable time and effort responding to concerns and questions about the questionnaire. In particular, recipients of questionnaires often seek reassurance concerning the Agency's handling of material claimed to be confidential. Also, despite the Agency's best efforts to resolve problems with the questionnaire before and after the pre-test, some firms have trouble completing the responses. This may also extend the response period.

Generally, the Agency is able to define its wastewater sampling effort based on information received in response to the questionnaires. While the questionnaire provides information about production processes, water uses and, in general terms, what is found in the industry's wastewater, on-site sampling is required to characterize specifically the pollutants found in discharges. This is because direct dischargers are ordinarily required to do limited, though regular, sampling under the monitoring provisions of their permits, and few indirect dischargers are required to do any frequent testing. Moreover, site visits are necessary to assess pollutant control technology. Scheduling of site visits depends on a number of factors. First, sampling is generally conducted by contractors

selected by the strict standards of the government contracting process. (A discussion of the contracting process appears below.) The logistics of coordinating the sampling can be extensive. Second, successful site visits require the presence of knowledgeable plant personnel to answer pertinent questions and to assist the sampling team in various ways. Third, site visits are useful only if plants are operating under "normal" conditions; therefore, visits must be scheduled to avoid "down time" periods for maintenance or other interruptions. Finally, scheduling of a site visit may depend on plant production schedules, if a plant produces numerous products or changes its product mix as part of a production cycle.

Sampling and site visits and many other tasks related to the preparation of guidelines, including numerous efforts related to economic, statistical and environmental analyses, are generally accomplished with the assistance of EPA contractors under supervision of Agency program staff. In addition, contract laboratories, rather than EPA laboratories, ordinarily analyze these samples. (EPA laboratories generally are devoted to research and development.) Hiring contractors is a rigorous and somewhat protracted process that is dictated by Federal contracting requirements. Among the typical steps are preparation by the Agency of a Request for Proposals (RFP), publication of notice of the Agency's contracting requirement, review and evaluation of proposals, determination by the Agency of the number of proposals that are in the competitive range, identification of any weaknesses or deficiencies with the applicants deemed to be competitive, review and evaluation of revised proposals or "best and final" offers, and the recommendation of awards to a source selection official. Excluding the possibility of a bid protest, the process usually takes between 8 to 12 months or more. In the event that the contract is set for a fixed time, and the life of the guideline project is longer than a contract's outer time limit, it is possible that the process would need to be repeated.

Most of the effluent sampling and analysis that has supported effluent guideline regulations promulgated to date has been conducted and funded by EPA. On occasion, however, these activities have been pursued on a cooperative basis with industry parties. For example, EPA and numerous pulp and paper manufacturers participated in a cooperative effort to sample and analyze effluent, wastewater treatment sludge and pulp from domestic mills that bleach pulp in their production processes. Despite the obvious advantage that such a cooperative situation presents to the Agency in terms of reduced cost, it is not clear that such a process shortens the time required to promulgate a regulation. In fact, the negotiated nature of such a cooperative program may actually lengthen the analytical data collection phase of the regulation development process.

When sampling is completed, wastewater samples are sent to laboratories for analysis. Contracts with the laboratories establish a response time frame, but also generally set a maximum number of analyses per month. Consequently, while the Agency generally assumes it will receive the analytical results 60 days after sampling, the actual response time can be longer than 60 days. Analytical response time can also be lengthened if the samples require reanalysis to confirm first round results. This may be necessary, for example, if the sample contains a large number of pollutants or contains chemically similar pollutants.

Responses to questionnaires are generally written on the questionnaire form itself. Together with results from sampling and site visits, the information must be entered into computer files. This is a considerable task that generally precedes the major analytical work and must be performed according to quality assurance procedures. Frequently, this effort is slowed by the need to interpret the information as submitted by the respondent and to reconcile discrepancies. However, only when it is completed, can the Agency conduct the statistical, economic and engineering analyses necessary to develop treatment control options and to select one or more of these options tentatively as the basis for a rulemaking proposal.

Rulemaking proposals, as well as final rules and other rulemaking notices (such as notices of the availability of new data) all undergo thorough internal Agency review before publication in the **Federal Register.** The process of internal review is designed not only to ensure the quality and completeness of regulatory packages, but to expedite rulemaking by the early identification of issues and resolution of any disagreements among concerned EPA offices.

Within the Agency, an individual "work group" oversees the development of each effluent guideline and the supporting record. The purpose of work groups is to provide for full consultation and coordination on a rulemaking package among all EPA offices (often including regional offices) that participate in the rulemaking. After the work group develops treatment control options for a guideline, the options typically are presented to the Administrator as the basis for the proposed guideline. After "options selection", work groups must reach closure on a rulemaking package that implements the proposal of the selected treatment option before review of the package at higher levels. "Work Group Closure" on a regulatory package that proposes a guideline occurs when the work group concludes that the major issues presented by a rulemaking package are resolved and that the package is generally ready for consideration by the Agency's senior management. A closure meeting usually follows review and revision of several drafts of a rulemaking package. This can take many months.

Following Work Group Closure, several steps must be taken before publication of a proposed guideline. These steps usually begin with revision of the preamble, proposed rule and associated documents in response to the comments raised by concerned offices at Work Group Closure. After the completion of revisions to these documents, which can be quite lengthy, final review begins. This includes a review by senior Agency management known as the "Red Border" process, separate review by OMB under Executive Order 12291, formal recommendation by the Assistant Administrator for Water and signature by the Administrator. This final review is not a mere formality; the Agency usually allows about 4 months to accomplish these steps. Any unresolved issues that remain after Work Group Closure must be settled. Once the Administrator approves the proposal, the rulemaking proposal can be published in the **Federal Register,** opening the public comment period. Comment periods generally are set for 60 to 90 days, but sometimes extend beyond 90 days for particularly complicated proposals.

At the close of the comment period on the proposed rule, the work group reviews the comments to identify significant issues and to initiate the preparation of responses to comments. Responding to comments submitted in guidelines rulemaking is often an enormous task because of the variety of processes and pollutants covered by the proposal, the range of treatment technologies that may be required, the different types of manufacturers in the category to be covered, and the number

of parties and citizens affected by the rule. (In the recent rulemaking setting guidelines for the Organic Chemicals, Plastics and Synthetic Fibers category (40 CFR part 414), the Agency received over 15,000 pages of comments.) During this period, the Agency also revises the technical support documents and other analyses in light of comments received.

Ultimately the Agency must decide what modifications to the proposed rule must be made in response to the public comments or in response to new data developed by EPA itself since the proposal. Sometimes it is necessary to re-propose all or parts of a rule or to publish a supplemental notice or notice of data availability. For example, in the Organic Chemicals rulemaking, the Agency issued three notices and requests for comments after the original proposal. If any notices must be issued between the publication of the rulemaking proposal and the promulgation of the final rule, these notices undergo internal review with many of the same requirements before publication and are subject to comment by the public.

Finally, the Agency prepares a final rulemaking package. This package must reflect appropriate resolution of comments received and issues raised since the proposal. Typically, "Options Selection" at the Administrator's level again takes place. In addition, the rulemaking record, which often includes tens of thousands of pages, must be assembled. The final rule is subject to the same review process as rulemaking proposals, including Work Group Closure, review in Red Border, and separate review by OMB before signature by the Administrator.

After publication of a final rule, the Agency must continue to devote significant time and resources to the rulemaking project. For example, the project staff works with staff from EPA regional offices and States on implementation of the guideline. In the event of a challenge in the United States Court of Appeals, the project staff must spend a great deal of additional time assisting in the defense of the rule. Project staff sometimes also become involved in special studies relating to the published rule. For example, pursuant to a directive in the 1989 appropriations bill (Pub. L. 100-404, August 19, 1988), the Agency performed a detailed study evaluating the discharges from raw sugar cane mills in Hawaii, to determine whether those mills should be afforded relief from existing guidelines as a result of economic and other factors. Until these post-publication activities end, the resources involved frequently cannot be transferred to the preparation of other guidelines.

The Agency is examining whether the time required for guidelines development can be reduced. In view of the fact that EPA is embarking on a new phase of guideline development, the Agency is also exploring ways in which the regulatory process can be made more efficient.

V. Effluent Guidelines Planning Process

A. Overview of Development of Today's Biennial Plan

In the August 25, 1988 proposal notice, EPA stated that in establishing priorities for the preparation of new and revised guidelines, it planned to (1) review existing technical studies and reports, notably the Domestic Sewage Study (DSS) (Report to Congress on the Discharge of Hazardous Wastes to Publicly Owned Treatment Works, EPA-530/SW-86-004, February 1986), the National Dioxin Study (Report to Congress, EPA-530/SW-87-025, August 1987), and the Oil and Gas Wastes Study (Report to Congress: Management of Wastes from the Exploration, Development, and Production of Crude Oil, Natural Gas and Geothermal Energy, EPA-530/SW-88-003, December 1987); (2) consult with EPA regional offices, States and publicly owned treatment works (POTWs) to obtain the benefit of their experience and judgment in setting rulemaking priorities; (3) consider legal challenges, variance requests and petitions for modification of existing guidelines as sources of information concerning priorities for revisions to those guidelines; and (4) consider public comments on the proposal notice. EPA identified six categories of dischargers for which rulemaking efforts were in progress, and for which new or revised guidelines were expected to be promulgated. The Agency identified four addition categories that were under review as candidates for revised guidelines or regulation of additional pollutants and ten more that were under review as candidates for new guidelines. Nine of the latter were selected on the basis of the findings of the DSS.

EPA has refined the foregoing strategy and followed it in preparing today's lists of categories for which the Agency will promulgate new or revised guidelines. The Agency has considered as candidates for 304(m) listing all of the categories of dischargers analyzed or brought to the Agency's attention as a result of review described in section V.B.3 of today's notice.

Specifically, in addition to the DSS, the National Dioxin Study and the Oil and Gas Wastes Study, EPA reviewed the Small Quantity Generator Study (National Small Quantity Hazardous Waste Generator Survey: Final Report; Office of Solid Waste, February 1985) and initial data from the National Bioaccumulation Study, which is currently being prepared. EPA considered pertinent information received from States and POTWs in the course of informal discussions, technical workshops, development of program guidance, and development of technical and field support. EPA also reviewed requests by industrial dischargers for variances from existing guidelines and petitions for modification of guidelines, and citizen reports and petitions concerning particular industries and pollutants. Following publication of the proposal, each of the Agency's ten regional offices nominated categories of dischargers for listing under section 304(m), based on their experience in issuing permits to categories of dischargers and carrying out other regulatory functions under the Clean Water Act. Finally, EPA considered the industry categories that commenters on the proposal urged the Agency to list under section 304(m). One commenter, NRDC, referred to additional categories discharging toxic or nonconventional pollutants that it argued should be listed.

EPA selected 15 categories of dischargers for more detailed study and comparison for purposes of setting regulatory priorities. The Agency judged that for these fifteen, the quality of available data and the known quantity of discharges of toxic and nonconventional pollutants justified affording them a high priority status in the 304(m) planning process. In addition, sufficient data were available for these 15 categories to make meaningful inter-category comparisons. For each of the 15 high priority categories, EPA prepared a "Preliminary Data Summary" (defined below) to provide a basis for systematic comparison. EPA then applied the ranking factors discussed in section V.B.1 of today's notice to develop the industry category rankings that determine the categories that EPA intends to regulate over the next several years.

There are numerous additional categories of dischargers of toxic or nonconventional pollutants that the Agency has considered in preparing today's notice but that are not among the categories that EPA ranked or listed, even though they might ultimately merit listing under section 304(m) for the

preparation of new or revised guidelines. In general, EPA had data for these categories indicating that they discharge lower quantities of toxic or nonconventional pollutants than the 15 higher priority categories, or EPA had less reliable data or no data concerning the presence or quantity of toxic or nonconventional pollutants in their waste streams. In preparing future biennial plans under section 304(m), EPA intends to review and reevaluate all categories that may discharge toxic or nonconventional pollutants, but that are not among the priority categories listed in today's notice. EPA will then collect additional data, as appropriate, and will determine which of these categories merit priority for inclusion in future biennial 304(m) plans.

EPA's rulemaking priorities evolve as the Agency gains more knowledge of and understanding about discharging industry categories. The Agency's analysis of those categories is complicated by the limitations of the data at hand and the difficulty of quantifiction of some environmental phenomena. This can lead to situations where the Agency will decide to initiate rulemaking for a particular industry because there are sufficient data on hand to justify such action, while delaying rulemaking covering another industry, pending the collection of additional data.

Once the Agency decides to initiate rulemaking for a category, it must commit extensive staff and fiscal resources for several years. Therefore the decision to initiate a rulemaking project is made with caution. The Agency is allocating its resources so that a balance of rulemaking actions and preliminary studies can be conducted simultaneously.

EPA is including in today's notice plans for new or revised pretreatment standards for indirect dischargers, as well as new or revised new source performance standards. The Agency recognizes that section 304(m) does not require EPA to review and revise such standards or to promulgate such standards except for new source performance standards for industries not heretofore covered by them. Nevertheless, EPA in the past has generally proposed these standards for an industry category when guidelines for direct dischargers in that category were proposed. The Agency will continue to do this in the future, whenever appropriate. Therefore, today's plan covers pretreatment standards as well as guidelines for direct dischargers.

B. Ranking Process

In response to the provisions of section 304(m), the Agency utilized a ranking process to determine the priority for promulgating new and revising existing regulations. Ranking consists of comparing available quantitative and qualitative information on various industries and setting priorities for the development of new or revised guidelines. The available information has been compiled into Preliminary Data Summaries. A single ranking process considered all candidate industries whether for revision of existing regulations or for the development of new regulations.

1. Evaluation Criteria

In section VI of the August 25, 1988 notice (53 FR 32588), EPA proposed a set of criteria for deciding whether to initiate rulemaking to revise existing or develop new guidelines or standards. Based on the public comments, and the receipt and development of additional data since the proposal, the Agency has refined these criteria. Most of the criteria in today's notice either reflect the proposed criteria as originally described, or improve on the original description with more specific characterizations of the data items to be evaluated. (Three factors listed in the proposal have been dropped for purposes of priority-setting, although they are still important factors to be considered in the promulgation of technology-based guidelines).

The refined criteria reflect an emphasis on discharges of toxic and nonconventional pollutants and other indicators of possible environmental concern. The criteria provide the Agency with a means of ranking industries by considering the environmental risk of their wastewater discharges and the potential for their reduction, the utility of new or revised guidelines to permit authorities and POTWs, and the existence of statutory deadlines or court orders mandating that guidelines and standards be issued or revised for particular categories of dischargers. The criteria are groups of factors that the Agency has considered and weighed in setting rulemaking priorities. The criteria can not be applied mechanically. In applying the criteria and selecting categories of dischargers for the preparation of new or revised guidlines, the Agency has used considerable judgment grounded in its expertise in the regulation of the discharge of pollutants and the administration of the Clean Water Act and other authorities that address pollution of the nation's waters.

For purposes of clarity and simplicity the criteria are organized into three groups: Environmental Factors, Utility, and Legal Mandates for Specific Categories.

a. *Environmental Factors.* Environmental factors assess the importance of issuing new or revised guidelines for an industry based on factors that include data and information normally collected, analyzed and/or considered at some point in the development of most effluent guidelines. Nine criteria are employed to measure the extent to which the categories of dischargers being evaluated affect human health and the environment and present opportunities for environmental improvement through the issuance of new or revised guidelines. The nine criteria are:

—Total quantity of toxic and nonconventional pollutants discharged by the category,
—Quantity of toxic and nonconventional pollutants discharged per facility,
—Carcinogens present in discharges,
—Number of pollutants detected in discharges,
—Total priority pollutant pound-equivalents discharged,
—Number of discharging facilities,
—Opportunity for pollution prevention and control of cross-media pollution,
—Costs and economic impacts of controls, and
—Extent to which treatment in place effectively controls pollutant discharges.

Three criteria listed in the proposed notice, "Types of pollutants discharged and their significance to human health and the aquatic environment"; "Amounts of pollutants discharged to air and water and captured in sludge"; and "Number and location of dischargers" are now largely subsumed in six of the refined criteria. The *Total Quantity of Toxic and Nonconventional Pollutants Discharged* and *Number of Pollutants Detected in Discharge* are used by the Agency as indicators of the scope and magnitude of the discharges of toxic and nonconventional pollutants by facilities in the category and their effects on human health and the environment. The *Total Priority Pollutant Pounds-Equivalent Discharged* criterion (based on the 126 pollutants codified at 40 CFR part 423 appendix A, for which the Agency is required to test) is a calculation using the mass loading of a pollutant (measured in pounds), multiplied by a weighting factor for each pollutant based on toxicity. The individual values are then summed to provide the category value. This measure reflects in the aggregate the degree to which an industry effluent

could be injurious to aquatic life and human health. The *Number of Discharging Facilities* in the category indicates the approximate number of direct and indirect dischargers.

Two other criteria assess the potential impact of average facilities on the environment. Identification of *Quantity of Priority Pollutants Discharged per Facility* and the *Carcinogens Present in Discharges* provides an indication of the type, number and general toxicity of the pollutants present in the effluent of facilities that discharge into receiving waters or to publicly-owned treatment works.

"Location of dischargers," a criterion included in the proposal notice, is not included in the revised factors. Location of dischargers can be important in considering impacts on specific receiving waters. Location may also be of concern if, for example, a large industrial facility dominates the flow contributed to a POTW or if a cluster of multiple smaller facilities sends wastewater to a single POTW. In such circumstances, the discharges sent to one POTW might cause operating problems not encountered if the same wastewaters were dispersed among several POTWs. Before the Agency undertakes rulemaking for a category, however, data on the location of specific plants are not always sufficient for meaningful comparison of different categories of dischargers.

The "amount of pollutants discharged to air" or "captured in sludge" are also difficult to determine while making preliminary assessments of discharging industries. These two proposed criteria also have been deleted. The Agency has instead adopted another criterion, *Opportunity for Pollution Prevention and Control of Cross-Media Pollution.* This criterion measures the extent to which the preparation of new or revised guidelines for particular categories presents opportunities for significant reduction in pollutant generation and prevention of the simple transfer of pollution from one medium to another without effective treatment. The "Impact on air emissions" criterion is also subsumed in this new criterion.

Concerning the *Costs and Economic Impacts of Controls*, everything else being equal, new or revised guideline efforts would be addressed to those categories able to incur the high treatment costs generally associated with stringent regulations ahead of those categories in weaker financial condition (and thus less likely to be able to incur high treatment costs). These controls reflect treatment technologies that are available and appropriate for facilities in given industrial categories. This factor does not remove categories from consideration or listing, but helps to order the categories relative to each other. Impacts are estimated by some of the same factors currently used by the Agency (primarily plant closures and job losses) to determine the acceptability of compliance costs associated with effluent guideline and standard technology options. When useful data are available, this information is included in the data summaries for new candidate industries.

In addition, EPA has developed some preliminary estimates of cost-effectiveness for treatment technologies that may serve as the basis for pollutant limitations in the industries under review in today's notice. Cost-effectiveness compares the costs of treatment to the pollutant removals obtained. Along with the other economic information, the cost-effectiveness results help to set priorities for development of new and revision of existing regulations. Cost effectiveness estimates are not available for all of the categories addressed in this notice due to a lack of up-to-date treatment technology information and cost data for some of the categories. Where these data are available, cost effectiveness results are used in the ranking scheme.

The *Treatment-in-Place* criterion measures the extent to which existing pollution control practices in the industry effectively control the discharge of toxic and nonconventional pollutants in wastewater. This criterion is an indicator of the potential environmental benefits of new or revised guidelines for an industry. For example, if the majority of facilities in an industry category have well-operated advanced treatment systems in place, the incremental benefit of new or revised guidelines may be small. Conversely, an absence of effective treatment will indicate a high degree of benefit. In the former case, the criterion would be assigned a low value; in the latter case, a high value is assigned.

The Agency has deleted "Volume of wastewater per facility" (also known as "wastewater flow") as an independent criterion. By itself, flow is not a useful indicator of the presence or quantity of toxic and nonconventional pollutant discharges. The volume of wastewater discharged per facility has been used, however, in combination with data on concentrations of toxic and nonconventional pollutants, to determine the mass of pollutants discharged by the ranked industries, supporting the estimates for "Total quantity of toxic and nonconventional pollutants discharged by the category," the "Quantity of toxic and nonconventional pollutants discharged per facility" and the "Total priority pollutant pound-equivalents discharged."

Finally, "Treatability of pollutants discharged" also has been deleted as an independent criterion. This criterion, as proposed, referred to an estimate of the level of performance of the control technologies or other methods that might be employed to reduce the discharge of pollutants by a category of dischargers. These considerations are important in setting technology-based effluent guidelines. However, while the Agency frequently is aware of some technologies and process and materials changes that will reduce discharges by an industry category, the level of performance of these control methods generally is not known when the Agency prepares preliminary studies of industries for the purpose of setting rulemaking priorities. Detailed study, including literature review and industry surveys, is necessary to identify the full range of pollutant control technologies applicable to an industry. This must be followed by analytical work to determine the actual performance levels that can be achieved. Therefore, the concept of treatability is considered in general terms in the "Cost and Economic Impacts of Controls" criterion, which is based on treatment technologies that might be applied to the various categories.

b. *Utility.* The second major factor used in the process to evaluate and rank industries was *Utility.* Utility indicates the relative importance of new or revised guidelines for the purposes of issuing NPDES permits (for direct dischargers) and supplementing pretreatment local limits (for indirect dischargers). In the absence of national guidelines, facilities that discharge to surface waters are subject to NPDES permits that include technology-based limits based on best professional judgment (BPJ). These BPJ limits take into account the same considerations that are used to establish effluent guidelines. Similarly, indirect dischargers to POTWs are subject to local limit requirements established by the POTW authorities. Thus, industrial dischargers may be effectively regulated even without national effluent guidelines and pretreatment standards, especially if the wastestreams are relatively simple—i.e., the number of pollutants is small and/or the pollutants present are well characterized in terms of treatability.

Developing permits for complex facilities (i.e., those with many wastestreams and/or large numbers of

pollutants, which may exhibit treatability characteristics that are poorly documented) in typically time-consuming and difficult. Similar difficulties may be encountered by POTWs in developing local pretreatment limits for industrial users not covered by categorical standards. The availability of effluent guidelines and categorical pretreatment standards for such industries allows for more efficient regulation by EPA, State agencies, and POTWs.

EPA headquarters relies upon information from its regional offices, States, municipalities, public interest groups and citizens to identify industry categories for which national regulations provide specific benefit to NPDES permit writers and POTW authorities. A recent submission which indicates the need for and utility of regulations for specific industries was provided by the Association of Metropolitan Sewerage Agenices [AMSA]. The letter from AMSA is included in the record for today's notice.

c. *Legal Mandates for Specific Categories.* Statutory requirements, court orders or settlement agreements that require promulgation of effluent guidelines and standards for specific industries also have been taken into account in developing today's rulemaking priorities.

The Agency is currently under a specific statutory mandate to promulgate guidelines for the Pesticide Chemicals category, and is a party to settlement agreements setting schedules for the issuance of guidelines in the Pulp, Paper, and Paperboard category and the Offshore subcategory of the Oil and Gas Extraction Category. These "committed" projects were ranked using the system described in this notice, but for all intents and purposes, were treated as mandatory activities. EPA has already invested considerable time and resources developing regulations for the projects in this group.

2. Agency Data Requirements for Setting Rulemaking Priorities; Preliminary Data Summaries

As discussed in section IV of the proposal notice (53 FR 32585–7), the Agency is currently gathering data on several industries for preliminary studies and rulemaking projects. The Agency uses all available information and data for the purpose of setting rulemaking priorities. For example, in the preliminary study of an industry, the Agency will rely on selective on-site wastewater sampling, data from NPDES and other regulatory programs (from within EPA and from other Federal and State agencies), data provided by industry associations and individual companies, and other sources such as research studies, professional journals and other literature. EPA generally will not administer a full-scale questionnaire survey or a comprehensive sampling and analysis program (as it would when obtaining information for full-scale rulemaking) because of the time and expense involved.

The purpose of a preliminary industry study is to indicate whether and to what extent an industry discharges toxic and nonconventional pollutants, and to provide a basis for comparison with other industries for purposes of assigning priorities for regulation. This objective can be met by combining the findings of selected on-site sampling with other descriptive information about the industry to form a profile for ranking. This compilation comprises the "Preliminary Data Summary."

The Preliminary Data Summary presents a synopsis of recent technical and economic information on a category of dischargers for use by EPA staff and management. The documents are not used directly as a basis for rulemaking, but are intended for use in the Agency's determination of which categories most require preparation of new or revised effluent guidelines, and form one major basis for the selection process that culminated in today's biennial plan. (They also may be expanded to become guidance documents for NPDES permit writers and POTWs.)

Preliminary Data Summaries are prepared after the Agency acquires new data and/or brings together previous data on an industry. The documents typically describe:

—The products manufactured and/or services provided by the industry;
—Number, types and geographic location of facilities;
—Destination of discharges (directly to surface waters, indirectly to publicly-owned treatment works, or both);
—Characterization of the wastewater discharges and identification of pollutants present in the wastestreams (e.g., mean concentrations of pollutants, wastewater volumes, mass loadings);
—Sampling and analytical methods employed to ascertain the presence and concentration of pollutants in the wastewater;
—Pollution control technologies in use and potentially applicable to the industry;
—Non-water quality environmental impacts associated with wastewater treatment in the industry (e.g., air emissions, wastewater treatment sludges, and other wastes including hazardous wastes);
—Cost of control technologies in place and cost estimates for additional controls;
—Estimates of water quality impacts of discharges within the subject industry;
—Economic assessment (current financial condition of firms in the industry, industry expansion or reduction trends, size characterization of firms, impact of estimated treatment costs on representative facilities, estimated cost-effectiveness of additional wastewater treatment technologies).

The type and quality of information varies among the preliminary data summaries, depending on the data available to the Agency when each document is prepared. For example, some of the current summaries have excellent information on the number and location of the discharging facilities while others contain estimates drawn from secondary data sources. However, the summaries represent the Agency's best characterization of industries at the time the summaries are compiled. As additional data are acquired, they will be factored into the ranking process. Consequently, the Preliminary Data Summaries are also subject to revision. The Agency will make the summaries available to the public.

3. Data Sources

In addition to data specifically acquired by the Agency for the purpose of assisting in priority selection, the Agency has examined several groups of existing sources of information for setting rulemaking priorities. Most, but not all, of these sources were used to support the plan in today's notice. Of these sources the Domestic Sewage Study (DSS) was relied on most extensively because it focused on wastewater from indirect dischargers and provides pollutant loading information that is comparable across a number of industries. Most of the sources described herein were designed for purposes other than setting effluent guidelines priorities, and the Agency has attempted to extract relevant data to make its comparisons. They are summarized as follows.

a. *Domestic Sewage Study and Follow-Up Activities.* EPA prepared the DSS pursuant to section 3018(a) of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6939). The Study describes the impact of RCRA hazardous wastes discharged to POTWs. The Agency examined the nature and sources of hazardous wastes discharged to POTWs; evaluated the effectiveness of EPA programs in dealing with such discharges; and recommended ways to improve the programs to achieve better control of hazardous wastes entering POTWs. One of the specific recommendations of the Study was that EPA evaluate several industrial categories to determine

whether new or revised categorical pretreatment standards should be promulgated.

Although the DSS dealt primarily with indirect dischargers, the findings are useful in evaluating direct dischargers because direct and indirect dischargers in a given industry do not differ significantly in the kinds of toxic or hazardous pollutants found in their wastewater. Similarly, although the Study focused on hazardous constituents defined in the RCRA program, these constituents include all toxic and many nonconventional pollutants regulated under the CWA.

The Agency has collected additional information on some of the DSS industries since publication of the 1986 report. This has consisted of reviewing the production processes and wastewater treatment systems in several industries, and analyzing a small number of wastewater samples from several plants in the categories. Samples were analyzed for a list of approximately 450 pollutants, comprised mainly of RCRA hazardous constituents and CWA priority pollutants. While the data do not provide a complete statistical profile of industry wastewater, they do indicate the number of pollutants found in the discharges and the range in the concentrations for those pollutants.

b. *Data from Other Programs and Technical Studies.* EPA has used and will continue to examine and use where appropriate other information sources to identify and evaluate potential candidates for new or revised effluent guidelines and standards. The Agency does not intend to use such data directly for rulemaking until further verification and evaluation of the validity and reliability of the information are made.

The *Toxic Release Inventory (TRI)* is an Agency program mandated by section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023), also known as Title III of the Superfund Amendments and Reauthorization Act (SARA). It is one source of information the Agency now has available to identify facilities that may discharge toxic chemicals to surface waters, or transfer them to POTWs. Information for the TRI is reported by a facility if it meets specified criteria on the size and type of facility and on amount and uses of TRI-listed chemicals. A facility must report if it meets all of the following criteria: it is a manufacturing facility; it employs ten or more people; and it manufactures, imports, processes or uses TRI listed chemicals above specified threshold amounts. The TRI reports amounts of 307 different toxic chemicals and 20 broadly-defined chemical categories—which can include many individual chemicals—released by facilities directly to the environment or transported to off-site locations. For 1987, the first year of TRI reporting coverage, facilities were required to report to EPA by July 1, 1988. These data are now available for review and use by the Agency in determining areas which may require further study or data acquisition.

TRI data, while a valuable indicator of possible environmental concern, are limited in their usefulness for effluent guidelines planning. The data do not directly gauge the extent to which humans or the environment are exposed or at risk. Moreover, the data do not provide comprehensive release data for industry because the reporting thresholds exempt some facilities. The accuracy of the industry totals is also limited because the individual facility reports are based on estimates submitted by the respondents.

National Dioxin Study. EPA conducted a two-year nationwide study to investigate the extent of dioxin [primarily 2,3,7,8-tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD)] contamination in the environment. The Agency examined sites involved in the production or disposal of 2,4,5-trichlorophenol (2,4,5-TCP) and related pesticide chemicals, and other sites where dioxin formation may have occurred. (2,3,7,8-TCDD is a trace byproduct of the process used to manufacture these pesticides.) While contamination was found, as expected, at many sites involved in production of the pesticide chemicals, a previously unsuspected source of dioxin contamination was found in discharges from pulp and paper mills that use chlorine to bleach-pulp. This finding prompted the Agency to conduct additional studies targeted at pulp and paper mill discharges.

Small Quantity Generators Study. In 1983 and 1984, EPA conducted a survey of generators of hazardous waste who produce less than 1,000 kilograms of hazardous waste per month. While the focus of the survey was on methods for disposal of hazardous waste, some information on discharge of liquid hazardous wastes to POTWs was compiled. The study did not assess quantitative data on pollutant characterization. The final report was published in February 1985.

Oil and Gas Wastes Study. EPA conducted a study of wastes associated with the exploration, development or production of crude oil or natural gas pursuant to section 8002(m) of the 1980 amendments to RCRA. The study addressed, among other aspects, drilling fluids, produced waters and other wastes associated with oil and gas operations.

The study developed information related to the sources of wastes and amounts of waste generated, present disposal practices and their related potential danger to human health and the environment, and alternatives to the current disposal methods and the cost and impact of these alternatives on the oil and gas industry. EPA has used data from this study to develop pollutant loading estimates for some of these wastes, and will continue to utilize the study results in rulemaking efforts for the Oil and Gas category.

National Bioaccumulation Study. Bioaccumulation is the uptake and retention of chemicals present in the environment by plants and animals. Aquatic organisms such as fish are exposed to certain chemicals through ingestion of food and by absorption from water.

The National Bioaccumulation Study, which EPA began in 1986 as a follow-up to the National Dioxin Study, has the objective of identifying toxic pollutants bioaccumulating in fish to levels causing significant human health risks through consumption, together with some indication of the possible sources of the pollutants.

EPA expects to publish the study in the Spring of 1990. Data from the study will aid in planning rulemaking efforts. It is important to recognize that the Bioaccumulation Study is a screening study.

Pretreatment Effectiveness Study. Section 519 of the Water Quality Act requires EPA to prepare a report to Congress which assesses the effectiveness of the pretreatment program in meeting the goals of the Clean Water Act. The Office of Water has begun a major study to meet the requirements of section 519. The study will assess the adequacy of data on environmental impacts; evaluate the extent to which secondary treatment at POTWs effectively removes toxic pollutants; and evaluate the capability of POTWs to revise pretreatment standards and set more stringent local limits. Finally, the study will evaluate alternatives for improving the overall effectiveness of the national pretreatment program. The findings of the study may identify industrial categories requiring additional national controls.

Pollution Prevention Studies. EPA has established a special program to develop activities, such as source reduction and recycling, to prevent or reduce the generation of pollutants and

their distribution in the environment. "Pollution Prevention" strategies are being supported by the EPA program offices and operate under the general management of EPA's Office of Pollution Prevention and Planning. These activities are expected to identify industrial categories where substantial reductions in pollutant discharge can be obtained.

International Sources. Information from foreign governments and industries made available to the Agency also assists in selecting regulatory priorities. One recent example is monitoring information made available by the Ontario Ministry of the Environment indicating the presence of dioxins and furans in certain wastestreams in the petroleum refining industry. Responding to this information, EPA is currently sampling similar wastestreams at refineries in the United States to help evaluate the human health and environmental problem and the need for regulation.

Another example of foreign cooperation on environmental issues deals with chlorinated organic compounds in pulp and paper mill wastewaters. The Sweden Environmental Protection Board (EPB) Environmental Cellulose Project has documented biological effects of pulp and paper mill wastes on several Baltic Sea species. A communiqué from the EPB indicates that the Swedish Pulp and Paper Research Institute has positively identified 315 individual compounds in wastestreams from pulp bleaching operations and whole mill effluent. Information prepared for the Ontario Ministry of the Environment includes data on approximately 200 organic compounds detected in various wastestreams at various pulp and paper mills.

c. *Consultation between EPA Offices and with States and POTWs.* The experience of people who implement the Agency's water pollution control programs is an important source of information relevant to setting regulatory priorities. State permit authorities, as well as EPA regional offices, are responsible for translating effluent guidelines into limits in NPDES permits issued to individual dischargers, and for enforcing these limits. POTWs share responsibility for implementing categorical pretreatment standards, and set local limits. These authorities have a good working knowledge of the existing guidelines and standards, of technological and economic factors that affect limits, and of industrial categories for which new or better limits are needed.

EPA routinely meets with States and POTWs in several contexts. These include informal discussions, technical workshops, development of program guidance, and development of technical assistance and field support for permit writers and municipal operators of POTW pretreatment programs. While these meetings are held to enhance the ability and capacity of permit writers and municipal authorities, they also provide information to assist in the selection of particular industries as potential candidates for new or revised guidelines and standards because of identified problems. Since proposal, EPA has revised the criteria for industry evaluation and selection to take increased account of the expertise and needs of State and local permit writers and POTWs through inclusion of the Utility factor described in section V.B.1 of this notice.

In addition to exchanges of information in the formats described above, one POTW submitted written comments on the Agency's notice of proposed plans. These comments are included in the record for today's notice.

d. *Review of Variance Requests and Petitions.* Requests by industrial dischargers for variances under sections 301 (c), (g) and (n) of the CWA are a less reliable source of information about industry categories that may need review or revision, but such requests can disclose technical information indicating that a guideline should be reviewed. These requests are specific to individual facilities and frequently focus on only one or a few pollutants or wastestreams. As a consequence, they tend not to provide comprehensive information with which to address the need to issue new or revised guidelines for entire categories of dischargers. Variance requests also tend to be submitted soon after the promulgation of regulations; in these cases, it is unlikely that EPA will initiate immediate efforts to broadly revise regulations for the category.

Similarly, citizen petitions concerning particular industries and pollutants may contain data indicating that a guideline should be reviewed. More typically, however, such petitions include little or no data, or may include data specific to one or a few industrial facilities. In these cases, they serve to stimulate action on EPA's part, but are rarely sufficient in themselves to allow analysis of the need for category-wide regulatory efforts. (EPA's ensuing action would typically be a review of facility permits or POTW local limits for possible revisions, followed by broader data gathering if the Agency finds that the reported problems occur throughout an industry category.)

e. *Review of Public Comments and Citizen Reports.* The Agency received comments from the public on the August 25, 1988 proposal. EPA carefully considered the comments before issuing today's notice (see section VIII). EPA expects to receive further public comments on future section 304(m) notices. The Agency will consider all such comments in its efforts to identify and assess the need for regulations for industrial categories.

Citizen reports about industrial dischargers typically are directed toward a specific discharging facility, and as such they are usually referred to the responsible State enforcement agency or EPA regional office. As is the case with citizen petitions, such reports usually describe plant-specific circumstances rather than industry-wide trends.

C. Application of Criteria

This section of the notice describes how the evaluation criteria discussed in section V.B.1 of today's notice (i.e., Environmental Factors, Utility and Legal Mandates) have been applied to develop the industry category rankings used to select the categories in the current biennial plan for which EPA will prepare new or revised guidelines and standards. The industries listed and ranked in today's notice are those for which the Agency judged to had sufficient data. The Agency stresses that the industry rankings are relative to each other; they are not being compared to other categories for which sufficient data are not yet available to engage in comparative ranking. As EPA gathers data on additional industries, it will rank them and include them in subsequent notices.

In the ranking process contained in the proposal notice, EPA has attempted to use quantitative information wherever possible. Given that quantitative data are not available for all of the evaluation factors, both quantitative and qualitative information are used. In considering the information and the various factors, EPA has applied considerable judgment as to which are of greater and lesser importance.

1. Environmental Factors

The most important environmental factors in ranking the industries concerned are the discharges of toxic and nonconventional pollutants. The Agency has found it difficult to estimate the relative importance of an industry without pollutant loading information, and generally defers the ranking of an

industry until such data become available. In ranking the industries listed in today's notice, the Agency gave special emphasis to pollutant loading data. Although the 126 priority pollutants do not comprise the full range of toxic and nonconventional pollutants that may be present in wastewater, the Agency has priority pollutant data for most of the industries it considered, and is using the data as an indicator for a fuller scope of pollutants. In addition, the Agency has information on a wider range of pollutants (approximately 450) in the DSS industries, and has used this information in ranking. This allows EPA to be responsive to the intent of section 304(m) to address toxic and nonconventional pollutants. Where pollutant data were not available or comparable, the Agency has examined other known characteristics of industries to make an estimate of the relative environmental impact of their wastewater discharges.

The evaluation is based largely on data and information contained in the Preliminary Data Summaries, supplemented by the judgment of Agency staff. The summary ratings for the industry categories are shown in Table 1. (A synopsis of the ratings for all three factors appears in section V.C.4.)

2. Utility

The category ratings for Utility, which refers to the importance and usefulness of new or revised national guidelines and standards to permit authorities and pretreatment progam operators, are assigned based on the knowledge and judgment of Agency staff and upon information provided by the States and others. Section V.B.3.c of today's notice described the extensive continuing communication between agency staff, State permit writers and local POTW operators. These contacts provide information identifying the industries for which permit writers and POTWs believe national effluent limitations guidelines and pretreatment standards will be most useful to them. The information provided through these contacts is included in the public record for this notice.

The utility values assigned to the industry categories considered for this notice are presented in Table 1.

3. Legal Mandates for Specific Categories

The third overall assessment factor used in the Agency's ranking system is Legal Mandate for Specific Categories ("Mandate.") If there is a statutory provision or judicial order concerning the development of guidelines for a specific category, this is indicated in the following Table by a "Yes." If there is no statutory or judicial order that the Agency develop guidelines for a specific category of dischargers, this is indicated by a "No."

TABLE 1.—RANKING OF PRIORITY INDUSTRIES

Category	Environmental factors	Utility	Legal mandates
1. Pesticide chemicals [1]	High	High	Yes
2. Pulp, paper, and paperboard [1]	High	High	Yes
3. Pharmaceutical manufacturing	High	High	No
4. Hazardous waste treatment	High	High	No
5. Machinery manufacturing and rebuidling	High	Medium	No
6. Coastal oil and gas	Medium	High	No
7. Offshore oil and gas [1]	Medium	Low	Yes
8. Transportation equipment cleaning	High	Medium	No
9. Industrial laundries	Medium	Medium	No
10. Stripper oil and gas	Low	High	No
11. Used oil reclamation and re-refining	Medium	Low	No
12. Drum reconditioning	Low	Medium	No
13. Solvent recycling	Low	Medium	No
14. Hospitals	Low	Low	No
15. Paint formulating	Low	Low	No

NOTE: Industries are ranked only in relation to each other.
[1] Indicates committed rulemaking project (see discussion in Section V.B.1.c of today's notice).

4. Industry-by-Industry Evaluations

Pesticide Chemicals (40 CFR part 455). This category includes facilities that manufacture, formulate or package pesticide chemicals. Currently valid regulation covering the Pesticide Chemicals category set BPT limitations only. In 1986, a final regulations establishing BAT guidelines, NSPS, PSNS and PSES was withdrawn after challenge by industry in the U.S. Court of Appeals for the Eight Circuit. (EPA determined that there were errors in the database used to derive the numerical limitations in the rule and therefore requested remand of the rule for reconsideration by the Agency.) Since the remand, the Agency has been preparing proposed rules establishing BAT, NSPS, PSNS and PSES. The Agency is under both statutory and judicial mandates to develop guidelines covering this category. Section 301(f) of the Water Quality Act of 1987 (101 Stat. 30) required that BAT guidelines be promulgated for this category by December 31, 1986. The Pesticide Chemicals category also is addressed in the 1976 consent decree. Thus, the *Mandate* factor is applicable.

The Pesticide Chemicals category also rates High for *Environmental Factors.* The industry is composed of 92 manufacturing facilities and over 3,000 formulating/packaging facilities. These facilities discharge significant amounts of highly toxic pollutants. The Agency estimates that discharges from these facilities are in the range of 175 million to almost 1 billion pound-equivalents per year.

Finally, the Pesticide Chemicals category rates High for *Utility.* Facilities in this category handle a wide variety of pollutants. The pollutant mix changes seasonally, according to the industry's manufacturing cycle. This complex and variable pollutant mix greatly complicates NPDES permit issuance and the establishment of pretreatment limits in the absence of national standards. Thus the Agency believes that guidelines and standards will be of great value to permit writers and POTWs. In addition, as part of the Pesticide Chemicals rulemaking, the Agency is developing several new methods to detect and measure pollutants discharged by Pesticide Chemicals facilities. These analytical methods will be available for use to control pesticide

active ingredients in other regulatory contexts, such as regulations governing drinking water protection and hazardous waste management. The methods also will be useful in assessing the impacts of pesticide use on ambient water quality.

Pharmaceutical Manufacturing (40 CFR part 439). The Agency has already promulgated BAT guidelines and new source performance standards covering the Pharmaceutical Manufacturing category. The Pharmaceutical Manufacturing industry is rated High for *Environmental Factors.* This category was identified in the DSS as a major discharger of hazardous pollutants. Even though guidelines are in place, the Agency estimates that the Pharmaceutical Manufacturing category discharges about 2.1 million pounds per year of total priority volatile organics and about 6 times that quantity of non-priority volatile pollutants. A large portion of the pollutant loadings are comprised of volatile organic chemicals (VOCs), such as solvents. Some of the VOCs are suspected human carcinogens. Many pharmaceutical plants that are indirect dischargers have little or no treatment in place. Thus these organic compounds are not being adequately controlled by many plants. This has resulted in operating problems, including upsets, for some POTWs. The Agency believes that the presence of VOCs in wastewater from facilities in the Pharmaceutical Manufacturing category presents a significant opportunity for control of cross-media pollution, because VOCs discharged in wastewater can volatilize into the air. Many VOCs undergo chemical transformation in the air and contribute to the formation of ozone in the lower atmosphere. Many urban areas are in serious violation of national ambient air quality standards for ozone, adversely affecting the health of millions of Americans and causing significant property damage. VOCs also contribute to the destruction of the tropospheric, protective ozone layer which protects the Earth's surface from harmful ultraviolet radiation.

With respect to *Utility*, dischargers in this category typically manufacture a large variety of products at different times, causing the resulting wastewater to contain a complex and varying mix of pollutants. As in the Pesticide Chemicals category, the absence of a national guideline in this situation complicates the regulatory task facing permit writers and POTWs. All six EPA regions that include most Pharmaceutical Manufacturing facilities recommended this category for priority in the development of guidelines.

Hazardous Waste Treatment. This category consists of three groups of facilities: a. Facilities that treat aqueous hazardous waste; b. Hazardous waste incinerators with wet scrubbers; and c. Municipal and hazardous waste landfills with leachate collection. These facilities were identified in the DSS as potentially contributing large amounts of hazardous wastes to POTWs. The Agency has not previously published guidelines specifically covering the Hazardous Waste Treatment (HWT) category. (The Agency has published guidelines for a number of industry categories that in practice send their discharges to Hazardous Waste Treaters for treatment. See 51 FR 21541, 21547, June 12, 1986.)

The Hazardous Waste Treatment category rated high for *Environmental Factors.* EPA estimates that the three groups of facilities comprising this category generate 20 million pounds of priority pollutants in raw wastewaters annually, and perhaps as much as 5 times that amount in non-priority hazardous and toxic pollutants. For example, leachates from municipal and hazardous waste landfills were found to contain high concentrations of toxic organic, metal, conventional and nonconventional pollutants. Some volatile and extractable toxic organic compounds were found in untreated leachate in the range of 1 to 10 milligrams per liter (mg/l), with a few at greater than 100 mg/l. Scrubber water from hazardous waste incinerators is known to contain high concentrations of metals. Thus the total quantity of toxic and nonconventional pollutants discharged by HWT facilities is relatively high. The aqueous hazardous waste treatment facilities (Group a) discharge the largest amount of pollutants of the three groups within the category.

The number of pollutants detected in the discharge of HWT facilities also is high. Commercial aqueous hazardous waste treatment facilities receive many types of wastes, including inorganic and organic process wastewaters, oily wastes and tank washings, off-specification chemicals, landfill leachates, spent solvents, incinerator scrubber wastewaters, and brines and miscellaneous acids and caustics. Wastewaters from aqueous HWT facilities vary widely, but typically contain high concentrations of toxic organic, metal, conventional and nonconventional pollutants. Treated effluents from aqueous hazardous waste treatment facilities sampled by the Agency contained high concentrations of conventional and nonconventional pollutants, as well as a few metals and organic compounds. These pollutant concentrations were observed despite the fact that the facilities sampled were using advanced wastewater treatment processes (e.g., multi-media filtration and granular activated carbon columns). Thus, treatment in place is relatively ineffective in controlling pollutants of concern. In addition, many of the pollutants discharged by HWT facilities are carcinogens.

The available data on the industry also resulted in a High rating for *Utility.* As noted above, the wastestreams from HWT facilities are complex in terms of the number and variety of pollutants present. Six EPA regional offices and many POTWs that receive HWT wastes recommended the HWT category—particularly aqueous treatment facilities—for priority in the development of guidelines.

Pulp, Paper, and Paperboard (40 CFR parts 430 and 431). The Agency has previously promulgated BPT, BCT and BAT guidelines, PSNS, PSES and NSPS covering the Pulp, Paper and Paperboard category. Since promulgation, however, results from the National Dioxin Study and the National Bioaccumulation Study (described in section V.B.3 of today's notice) have raised concerns about the presence of dioxins, furans and other toxic organic compounds in discharges from dischargers in the Pulp, Paper and Paperboard category.

This category is covered by a consent decree in *Environmental Defense Fund* v. *Thomas* (D.D.C. No. 85-0973) that calls for EPA to set a schedule for issuance of a proposal to incorporate dioxin limitations into the effluent guidelines for this industry (absent a determination by EPA not to pursue such regulations). Thus, the *Mandate* factor is applicable.

This industry is rated High for *Environmental Factors* as a result of the presence of dioxins and furans and other toxic organic compounds in industry wastestreams as described above. Dioxins, furans and other chlorinated organic compounds are known to be carcinogenic, bioaccumulative and persistent. The development of guidelines addressing these pollutants ranks High for *Utility*, even though much is already known about the wastestreams and treatment process effectiveness. This is because some control methods addressing dioxins, furans and other chlorinated organic compounds are known, but their effectiveness is not well defined. This

greatly complicates development of BPJ permits.

Machinery Manufacturing and Rebuilding. This category, broadly defined, covers facilities that perform wastewater-generating processes on metal machinery and equipment, including manufacture and assembly, rebuilding, repair and maintenance. The Agency has not previously published guidelines covering the Machinery Manufacturing and Rebuilding ("MM&R") category.

The MM&R category includes 15 major industrial groups that might appropriately be covered by separate effluent guidelines. These major groups are:

—Motor Vehicles (i.e., Automobiles);
—Bus and Truck;
—Aircraft;
—Aerospace Vehicles;
—Railroad;
—Ships and Boats;
—Office Machines;
—Hardware (Machine Tools, Screw Machines, Metal Forging and Stamping, Metal Springs, Heating Equipment, Fabricated Structural Metal);
—Ordnance;
—Stationary Industrial Equipment (including Electrical Equipment);
—Mobile Industrial Equipment;
—Household Equipment;
—Electronic Equipment (including Communication Equipment);
—Instruments (Measurement and Control Instruments, and Specialty Equipment); and
—Precious and Nonprecious Metals.

In sum, there are approximately 970,000 facilities covered by these designations. The majority of these facilities (692,000 or 71 percent of the total) are small businesses with fewer than 10 employees; 278,000 (29 percent) of the MM&R facilities have more than 9 employees.

Developing a single set of guidelines and standards to cover these facilities appears to be infeasible given the great diversity of the facilities. EPA intends at this time, therefore, to develop guidelines covering 7 of the 15 groups of facilities. These seven groups, which could be treated as separate subcategories within one industrial category, are Aircraft, Aerospace, Hardware, Ordnance, Stationary Industrial Equipment, Mobile Industrial Equipment, and Electronic Equipment. These seven groups were selected based on an analysis (found in the record for today's notice) that was similar to that employed to set overall priorities for the development of new and revised guidelines under section 304(m). The analysis focused especially on the amounts and kinds of wastewater discharges created by the different groups of dischargers, the likely economic impacts of stringent regulations, and the extent to which facilities in the different groups of dischargers are not currently affected by existing guidelines and standards. (Many MM&R facilities are subject to BPJ permits that were based in whole or in part on previously promulgated guidelines and standards, e.g., Electroplating, Nonferrous Metals Forming, and Metal Molding and Casting (Foundries). The data collected in developing these guidelines and standards and the promulgated limits provide a basis for the BPJ determination.) In preparing the next biennial plan under section 304(m), the Agency will address the other eight major groups of MM&R dischargers as candidates for the development of new guidelines and standards.

The 7 groups of dischargers for which EPA will develop guidelines represent about 195,000 facilities or 20 percent of all MM&R facilities. However, they account for about 52 percent of the total estimated discharges of toxic and nonconventional pollutants from the MM&R category. Almost one-half (48 percent) of the facilities have ten or more employees.

The 7 MM&R groups together are rated High for *Environmental Factors.* The DDS showed that facilities in the Machinery Manufacturing and Rebuilding category, as a group, are the largest contributor of toxic organic pollutants to POTWs. Subsequent studies confirm that these facilities are major generators of both organic and toxic metal pollutants. EPA estimates that the pollutant loadings from the 7 groups approximate 32 billion pounds annually. Current data indicate that about 10 percent of the facilities are direct dischargers and 70 percent discharge to POTWs. (The remaining 20 percent do not discharge wastewater.)

While this category contains a large number of facilities, a Medium rating for *Utility* (rather than a High rating) is appropriate because many of the direct discharging facilities in this category are covered by BPJ permits based on guidelines promulgated for other categories.

Coastal Oil and Gas Extraction. Coastal oil and gas extraction is a subcategory of the Oil and Gas Extraction Point Source Category (40 CFR part 435, subpart D). Existing guidelines are at the BPT level of control. Coastal facilities are defined as those engaged in production, field exploration, drilling, well completion and well treatment in coastal areas, *i.e.*, areas located in any body of water landward of the territorial seas or in any adjacement wetlands [40 CFR 435.40; 435.41(e)].

The coastal subcategory ranks Medium for *Environmental Factors.* The wastestreams generated by coastal drilling and production operations (drilling fluids, drill cuttings and produced water and others) contain a variety of toxic and nonconventional pollutants. The Agency estimates that coastal facilities discharge an estimated 4.2 million pounds per year of priority organic and inorganic pollutants in the produced water wastestream and an estimated 12.9 million pounds per year of priority and other organics and metals in the drilling fluids and drill cuttings wastestreams. In many cases, the discharges enter especially sensitive and valuable water environments. Coastal facilities lack adequate treatment in place to control the toxic and nonconventional pollutants in the discharges. A high rating was not deemed appropriate because the quantity of toxic and nonconventional pollutants discharged by individual facilities can be relatively low and because BPT controls on "oil and grease" (a listed conventional pollutant) effect removal of some of the toxic pollutants.

The coastal subcategory is rated High for *Utility* because coastal facilities are numerous, presenting a difficult permit-issuance task. Available data suggest there are 30,000 coastal wells, most of which are subject only to BPT requirements. Even before promulgation of guidelines, the technical studies that would be performed during the rulemaking—for example, waste characterization and assessment of available treatment technologies—would be of great value in writing permits to control the discharge of toxic and nonconventional pollutants by this populous subcategory. In addition, many of the technical studies performed as part of the Offshore rulemaking can be used to develop coastal guidelines. Thus the development of coastal guidelines will be relatively efficient because it can "piggyback" on the Agency's ongoing development of guidelines covering the Offshore subcategory.

Offshore Oil and Gas Extraction. Offshore Oil and Gas Extraction is also a subcategory of the Oil and Gas Extraction Category. The Offshore subcategory includes facilities located seaward of the inner boundary of the territorial seas. (See 40 CFR 435.10.) Existing guidelines are at the BPT level of control. EPA is developing new source performance standards for the Offshore subcategory as a result of a settlement agreement filed on July 9,

1980 in *NRDC* v. *Thomas* (D.D.C. No. 79–3442). On August 26, 1985, EPA proposed BAT, BCT and NSPS covering certain waste streams discharged from facilities in the offshore subcategory. NRDC has filed a motion to reopen *NRDC* v. *Thomas* to amend the complaint, seeking a new judicial schedule for that includes BAT and BCT guidelines as well as NSPS. Thus the *Mandate* factor applies. The Agency has been engaged in the preparation of BAT and BCT guidelines and new source performance standards covering the offshore subcategory for seveal years.

The Offshore subcategory ranks Medium for *Environmental Factors*. Pollutant loadings for each facility are in a range similar to that of coastal facilities. There are fewer offshore facilities, however (about 4,300 platforms); all of them have some level of treatment in place, and many are covered by NPDES general permits, which allow efficient administration EPA regional offices. These facts support the Agency's Low rating for *Utility*.

Transportation Equipment Cleaning. The Transportation Equipment Cleaning industry performs cleaning services on transportation equipment such as tank trucks, railroad tank cars, tank barges, and aircraft exteriors. Facilities that fit within this category are often part of other indusrial enterprises. A large percentage of these facilities are indirect dischargers or they combine their wastewater with that of other facilities prior to treatment. Currently no national guidelines apply to this category.

For the purposes of this notice, EPA has rated the Transportation Equipment Cleaning category High for *Environmental Factors*. Based on limited sampling data, the priority and nonconventional pollutant loadings for this category are estimated to be in the range of 51 million pounds annually. The Agency found high levels of conventional, toxic, and nonconventional pollutants in raw and treated wastewaters being discharged at several facilities that were sampled for the DSS. These pollutants often are derived from small residual quantities ("heels") of pure chemical products which remain in tanks that are cleaned at the facilities. Some of these chemical products (inorganic and organic acids and caustics, petroleum products, and other bulk products) are hazardous materials. Moreover, these tanks typically are cleaned with highly caustic solutions. Many facilities lack any treatment in place. The Agency has estimated that there are about 700 facilities devoted to the cleaning of tank trucks, rail tank cars, and tank barges. There are estimated to be 1,400 facilities the clean commercial aircraft exteriors.

Transportation Equipment Cleaning facilities and the wastewater that they discharge are relatively difficult to characterize for regulatory purposes due to the diversity of their operations. This difficulty has resulted in a high rating for Environmental Factors, based on current data. However, the Agency believes that the limited data presented in the Preliminary Data Summary may not be representative of the industry as a whole, because EPA's findings on tank barge discharges were higher than the expected industry average. (By comparison, sampling of tank truck and tank car facilities indicated lower levels of pollutants.) The Agency believes that further study would lead to Medium Environmental rating, in comparison to the other industries discussed in today's notice.

Compared to many of the other categories assessed by EPA, Transportation Equipment Cleaning is not large in terms of the number of dischargers (about 2,100). However, the difficulty of characterizing the discharges, in addition to the variable nature of the discharges (*i.e.*, types of pollutants, concentrations, wastewater flows) complicates the development of NPDES permits and POTW local limits and explains the Medium rating for *Utility*.

Industrial Laundries. Industrial laundries supply laundered and dry-cleaned work uniforms, wiping towels, safety equipment (such as gloves and flame-resistant clothing), dust covers and cloths, and similar items to industrial and commercial users. Currently no national guidelines apply to this category.

The Industrial Laundries categories rates Medium for *Environmental Factors*. Approximately 1,000 facilities, virtually all of them indirect dischargers, accept items for laundering which contain a wide range of toxic and nonconventional pollutants. EPA has estimated the priority and nonconventional pollutant loadings from this category to be approximately 34 million pounds annually. The discharge of these pollutants into sewage systems, especially solvents from shop towels, potentially affects POTW operations and discharges to receiving waters. The Agency believes that the economic impacts of guidelines on this category may be relatively high, because many facilities are small businesses.

Even though facilities in this category are located throughout the country, only two EPA regional offices identified this category as a priority candidate for effluent guidelines activity. Relative to other categories, it is difficult to develop POTW local limits for this category because of the number and concentrations of pollutants discharged and the need for additional wastewater treatability data. Thus the category ranks Medium for *Utility*.

Stripper Oil and Gas Extraction (40 CFR part 435 subpart F). This subcategory of the Oil and Gas Extraction point source category includes onshore oil facilities producing up to 10 barrels per day of crude oil and operating at the maximum feasible rate of production (40 CFR 435.60). Current guidelines are at the BPT level of control for stripper oil wells in the coastal and agricultural wildlife water use subcategories. No guidelines have been promulgated for onshore stripper oil wells.

The Stripper subcategory ranks Low for *Environmental Factors*. Although the Agency estimates the range of pollutants discharged by some stripper facilities to be similar to that produced by Coastal and Offshore facilities, many stripper facilities discharge smaller volumes of produced waters in proportion to their oil production level. (The aggregate flow of produced waters is greater than that for Coastal facilities.) This means that the quantity of toxic and nonconventional pollutants discharged per facility is relatively low. In addition, the Agency believes there is high probability that economic impacts could be an important issue in developing national guidelines, because by definition stripper facilities produce small amounts of oil.

With respect to *Utility*, however, the Stripper subcategory rates High. There are as many as 450,000 wells in the Stripper subcategory. This very large number of facilities presents a complex permit administration task.

Used Oil Reclamation and Re-Refining. This category is comprised of oil processors (reclaimers) and oil re-finers that manufacture oil products such as lube oil, road oil, fuel oil, hydraulic fluids, and specialty hydrocarbons from used oil. The industry utilizies a system of collectors such as service stations and common collection facilities.

The Used Oil Reclamation and Re-refining category ranked Medium for *Environmental Factors*. There are relatively few facilities in the category (68 facilities, 30 of them indirect dischargers) and the quantities of wastes they generate appear to be relatively low. However, this industry recycles used products, preventing them

from entering the environment as wastes. The preparation of guidelines covering facilities in the category presents an opportunity for pollution prevention by encouraging the recovery of material resources through uniform national regulation. The Agency recognizes the need to examine the facilities carefully so that effluent limitations do not discourage waste reduction of this kind. The category ranked Low for *Utility* because of the relatively small number of dischargers and the consequently manageable task of issuing permits and local limits.

Drum Reconditioning. This industry consists of facilities that recondition steel and polyethylene drums for re-use. Currently no guidelines are in effect covering this category. The Drum Reconditioning category ranks Low for *Environmental Factors.* The industry was identified in the DSS as contributing an unknown quantity of hazardous wastes to POTWs. There are an estimated total of 450 facilities, of which 50 have direct discharges and 200 have indirect discharges, and approximately 200 facilities do not discharge wastewater. The Agency estimates the total average priority and nonconventional pollutant loadings by facilities in the category to be in the order of 12 million pounds per year (raw waste). In addition, many of the facilities in this category are small businesses, which increases the likelihood that economic impacts may limit the reductions in discharges that can be required by guidelines. The category ranked Medium for *Utility.* The wastestreams from the Drum Reconditioning category are variable and complex, but only two EPA regional offices recommended the category for priority development of guidelines even though the industry is spread throughout the country.

Solvent Recycling. This industry recycles spent solvents for re-use in fuel blends or as solvents. Currently no guidelines are in effect covering this category.

The Solvent Recycling category ranked Low for *Environmental Factors.* Although the category was listed in the DSS as a contributor of hazardous wastes to POTWs, the Agency estimates that 81 percent of the 210 facilities in the category already attain zero discharge with controls currently in place. In addition, the overall toxic pound-equivalent loadings from discharging facilities are lower than those of the preceding industry categories. Three EPA regional offices and the Office of Water Enforcement and Permits at headquarters recommended it for priority development of guidelines, reflecting the fact that indirect discharges from Solvent Recycling facilities are known to interfere with the treatement effectiveness of POTWs. Therefore, the category is ranked Medium for *Utility.*

Hospitals. Currently no guidelines are in effect covering the Hospitals category. This category ranked Low relative to the other categories for both *Environmental Factors* and *Utility.* Although the DSS found that hospitals contribute toxic pollutants to POTWs, EPA's follow-up analysis indicates that this category in fact contributes relatively small pollutant loadings. The follow-up study estimated that there are approximately 6,870 hospitals. Most hospitals were found to employ recovery systems for silver, one of the most troublesome pollutants, rather than disposing of silver wastes via their discharges to POTWs. EPA has no evidence that indirect discharges of liquid wastes (including infectious wastes) by hospitals are causing problems at POTWs. This explains the Low ranking for *Environmental Factors.* (The Agency is addressing solid wastes from hospitals, such as used hypodermic needles and blood vials, under the authority of RCRA Subtitle D and a pilot program established pursuant to the Medical Waste Tracking Act of 1988, 42 U.S.C. 6992 et seq.)

The Hospitals category ranked Low for *Utility* primarily as a result of a lack of interest by EPA regional offices, States and municipalities in seeking information and/or recommending the development of guidelines. The Agency believes this lack of interest is significant because it seems to reflect the lack of evidence of POTW and environmental problems due to hospital wastewaters. Second, it is significant that so few regional offices expressed an interest in priority identification of guidelines for this category in view of the large number of facilities in the category spread throughout the United States.

Paint Formulating (40 CFR part 446). Under BPT and BAT guidelines, NSPS and PSNS that are currently in effect, manufacturers of oil-based paint are prohibited from discharging wastewater. Current guidelines do not cover formulation of water-based paint. Therefore the application of ranking criteria for this category pertains to water-based paint formulators, for consideration of a potential new subcategory under Part 446.

The Paint Formulating category ranks Low for *Environmental Factors.* Paint formulating facilities were identified in the DSS as contributing toxic pollutants to POTWs, but the toxic pound-equivalent loadings were low relative to the other categories discussed in detail in this notice. In addition, fewer paint manufacturers are discharging to POTWs than at the time of the publication of the DSS. This appears to be a result in part of the installation of controls (treatment in place) by an increasing segment of the manufacturers of water-based paints.

This category also ranked Low for *Utility.* Even though there are approximately 340 out of 1,440 paint manufacturing facilities throughout the country with wastewater discharges, only two EPA regional offices recommended the development of guidelines for the portions of the industry that are not already covered. The decrease in indirect discharges and other factors, such as improved control over wastewaters that are discharged to POTWs, have caused POTW operators to assign a low priority to the development of guidelines covering this category.

VI. The Effluent Guidelines Plan

On the basis of its evaluations summarized in the preceding portion of today's notice, EPA has selected the industries for which new or revised effluent limitations guidelines and new source performance standards will be developed as a part of its current biennial plan under section 304(m). The number of rulemaking projects selected is based on the Agency's estimate of the resources required for each project and the expected level of available resources for the effluent guidelines program.

"Existing" guidelines are those covering categories of dischargers for which the Agency has previously promulgated BAT guidelines or new source performance standards. See section 304(m)(1)(A). "New" guidelines are those covering categories for which BAT limitations and NSPS have not been previously promulgated. See section 304(m)(1)(B). "New" guidelines thus include revisions to existing guidelines that do not contain BAT or NSPS limits (even though they may contain BPT limits), and guidelines for industries not currently covered by any guidelines.

The descriptions of the industry categories in today's notice are approximate; they are based on currently available data. EPA formally defines a category (or subcategory) when a proposed or final rule is published. As the Agency collects additional information, the scope of a

category for purpose of the development of guidelines may be revised.

A. Existing Effluent Guidelines and Standards

1. Rulemaking Actions: Revisions to Existing Guidelines

The Agency has selected the following industrial categories for revision of existing guidelines; the estimated schedule for promulgation is given below. Although section 304(m) does not mandate any schedule for the promulgation of revisions to existing regulations, the Agency is providing this information based on EPA's current best estimate of the time necessary to promulgate a defensible regulation.

Organic Chemicals, Plastics and Synthetic Fibers	1993
Pharmaceutical Manufacturing	1994
Pulp, Paper, and Paperboard	1995

a. *Organic Chemicals, Plastics and Synthetic Fibers* (40 CFR part 414). EPA promulgated regulations covering this industry on November 5, 1987 (52 FR 42522). The regulations were subsequently challenged by industry and NRDC in the United States Court of Appeals for the Fifth Circuit [*Chemical Manufacturers Association v. E.P.A.*, 870 F.2d 177, *mod.* 885 F.2d 253 (5th Cir., 1989)]. In response to petitions for rehearing, the Court modified its initial decision. Even though the initial decision left the entire regulation in force, the Court required EPA to consider establishing more stringent toxic pollutant limitations for a segment of the industry that must comply with subpart J limitations (approximately 30 direct-discharge plants without biological treatment) and more stringent NSPS based on recycling of wastewater. In the October 10, 1989 revision of the initial decision, the court remanded for further rulemaking the subpart J limitations for 19 pollutants based on in-plant biological treatment technology. The Agency is initiating efforts to collect additional data and information for technical and economic studies to provide a basis for proposing and promulgating appropriate regulations.

In the interim, as a result of settlement agreements reached during litigation on the rule, EPA will propose other revisions to the regulation in 1990. This proposal will include provisions to (1) allow regulatory authorities to establish cyanide limitations and standards based on BPJ for elevated levels of non-amenable cyanide that result from unavoidable cyanide at the process source of cyanide-bearing waste streams, (2) allow permit authorities to establish metals limitations and standards to accommodate low background levels in "non-metal-bearing" waste streams that result from corrosion of construction materials or from contamination of raw materials, and (3) correct listing errors in appendices A and B of 40 CFR part 414.

EPA published a notice of revocation for one pollutant pursuant to a settlement agreement reached during litigation (along with technical corrections) on June 29, 1989 (54 FR 27351).

This category was not formally ranked because the Fifth Circuit rendered its decision late in the 304(m) process. In any event, the judicial decision and the settlement agreements would have made the Mandate factor applicable.

b. *Pharmaceutical Manufacturing* (40 CFR part 439). EPA has begun on-site sampling and technical and economic surveys of the industry, and will follow with engineering and environmental studies.

c. *Pulp, Paper, and Paperboard* (40 CFR part 430). Detailed review of the effluent limitations guidelines based upon best practicable technology (BPT) for all existing sources is under way, with revisions to address dioxins and furans and any other pollutants of concern (e.g., conventional pollutants, other chlorinated organic compounds) for kraft and sulfite mills.

2. Reviews of Existing Guidelines

The Agency will review the following promulgated guidelines for potential future revision. These reviews may conclude that revised guidelines will be prepared, that guidance for permit writers and POTWs should be developed, or that the categories do not merit priority for the preparation of revised guidelines. Results of the reviews will appear in future biennial plans under section 304(m), the semiannual *Regulatory Agenda*, and other appropriate notices.

Petroleum Refining
Timber Products Processing
Textile Mills

a. *Petroleum Refining* (40 CFR part 419). EPA is gathering new information on petroleum refineries, based on recent findings concerning the presence of dioxins and furans in some refinery wastestreams. In addition, based on a recommendation from the Agency's Region 9 permit office, a review of the water use practices in this industry has been initiated. Based on this review, certain water conservation practices may be incorporated into the flow basis for the existing production mass-based regulations.

b. *Timber Products Processing* (40 CFR part 429). EPA has previously issued BPT, BAT, NSPS, PSES and PSNS guidelines and standards covering three Wood Preserving subcategories of the Timber Products Processing category [Water Borne or Nonpressure Subcategory, subpart F; Steam Subcategory, subpart G (BAT reserved); and Boulton Subcategory (subpart H)]. Discharges from these subcategories include metals, pesticides, and various toxic organic compounds. The Agency has collected a limited amount of data to evaluate whether the guidelines for subcategories F, G and H should be revised to address those pollutants. The Agency's Office of Solid Waste is in the process of listing additional wastes and wastewaters from wood preserving processes under RCRA. This would subject those wastes and wastewaters to regulation under RCRA Subtitle C, except as excluded (for example, under 40 CFR 261.4). See 53 FR 53288-9 (December 30, 1988). As resources allow, the Agency will collect additional information and prepare a preliminary data summary.

c. *Textile Mills* (40 CFR part 410). EPA included the Textile Mills category in the DSS. The Agency is concerned about discharges from textile mills as a result of recommendations from its Region 1 staff; however, the available data were considered insufficient to permit preparation of a preliminary data summary and detailed comparison with the categories for which preliminary data summaries were prepared. As resources allow, the Agency will collect additional information on the industry in order to prepare a preliminary data summary.

B. New Guidelines

1. Rulemaking Actions

In response to sec. 304(m), EPA has undertaken or is continuing the development of the following "new" guidelines—i.e., guidelines covering categories discharging toxic or nonconventional pollutants for which BAT guidelines and NSPS for toxic and nonconventional pollutants have not been previously published. The estimated promulgation dates are based on current projections of available resources and of the time required to develop a defensible rule covering the category (see section IV of today's notice). It is assumed that the data collected during the development of the guidelines will support the ultimate promulgation of guidelines for these

categories. (The alternative to regulations would be development of guidance documents and technical assistance for permit writers.) Even though a category is included in this list, the Agency retains discretion to determine that guidelines are not appropriate for the listed categories. Adjustments to these projections will appear in future biennial plans under section 304(m) and the semiannual *Regulatory Agenda.*

Offshore Oil and Gas Extraction	1992
Pesticide Chemicals (manufacturing subcategory)	1992
Pesticide Chemicals (formulating/packaging subcategory)	1994
Hazardous Waste Treatment, Phase 1	1995
Machinery Manufacturing and Rebuilding	1995
Coastal Oil and Gas Extraction	1995

a. *Offshore Oil and Gas Extraction* (40 CFR part 435, subpart A). On August 26, 1985 EPA proposed BAT and BCT guidelines and NSPS covering certain wastestreams discharged by the offshore facilities. Additional wastestreams will be covered by a proposal in 1990, and promulgation of a final rule is planned for 1992.

b. *Pesticide Chemicals* (40 CFR part 455). The Agency has promulgated BPT guidelines covering the Organic Pesticides Chemicals Manufacturing Subcategory, the Metallo-Organic Pesticides Chemicals Manufacturing Subcategory and the Pesticides Chemicals Formulating and Packaging Subcategory. BAT rules were withdrawn by the Agency in 1986. Since that time EPA has begun a major new data collection effort as the starting point for developing a new rulemaking. This effort includes on-site wastewater sampling. While the sampling and analytical activities are not yet complete, early findings confirm previous studies showing that the industry continues to discharge substantial amounts of toxic and nonconventional pollutants directly to surface waters and to POTWs. The BAT guidelines will be promulgated in two phases—the first covering manufacturing facilities, and the second formulating and packaging facilities.

c. *Hazardous Waste Treatment.* Development of regulations for hazardous waste treatment facilities will be done in two phases. The Phase 1 regulation will cover facilities described in section V.C.4 of today's notice—facilities treating aqueous hazardous wastes. The Agency has not yet scheduled a Phase 2 regulation, which would regulate hazardous waste incinerators and landfill leachate discharges.

The complexity of this category makes it infeasible for the Agency to cover all the waste streams in one rulemaking action. As is explained in section V.C.4, Phase 1 will cover aqueous treatment facilities because they discharge the largest amount of pollutants of the groups within the category, and have generated the highest level of concern among POTW and permit authorities. Additionally, some landfill leachate is sent to aqueous treatment facilities for treatment, so those wastes will be covered in the Phase 1 rule.

d. *Machinery Manufacturing and Rebuilding.* EPA is developing technical and economic surveys for the MM&R category, and will promulgate guidelines covering Aircraft, Aerospace, Hardware, Ordnance, Stationary Industrial Equipment, Mobile Industrial Equipment and Electronic Equipment by 1995.

e. *Coastal Oil and Gas Extraction* (40 CFR part 435, subpart D). Currently only BPT guidelines have been promulgated for the Coastal subcategory of the Oil and Gas Extraction category. EPA is considering modification of the definition of "coastal," which determines the applicability of the rules to particular facilities, and is planning to promulgate BAT and BCT guidelines, and NSPS by 1995. The Agency published a Request for Comments on November 8, 1989 (54 FR 46919).

2. Continuation of Studies

EPA is conducting studies on several categories for potential inclusion in future biennial plans as categories for which new guidelines will be prepared. Preliminary data summaries or similar documents have been developed for each category. These are included in the record for today's notice. Seven of the eight industries are listed as part of EPA's follow-up on the DSS. The Stripper subcategory of the Oil and Gas Extraction Category will be studied further during the development of new guidelines covering the Coastal subcategory, a related segment of the oil and gas extraction category.

Drum Reconditioning
Hospitals
Industrial Laundries
Paint Formulating
Solvent Recycling
Stripper Oil and Gas Extraction
Transportation Equipment Cleaning
Used Oil Reclamation and Re-Refining

VII. Summary of Changes from Proposed Notice

This section identifies the most significant changes from the August 25, 1988 proposal notice.

A. Clarification of Evaluation Criteria

Section VI of the proposal notice (53 FR 32588) listed the decision criteria EPA would consider in determining whether to initiate the preparation of new or revised guidelines. Section V.B.1 of today's notice discusses the Agency's refinements in and additions to the evaluation criteria used for setting rulemaking priorities. These criteria provide a means for ranking industries with regard to their potential environmental risk, the relative utility of regulations to permit authorities and POTWs, and the existence of statutory provisions or judicial orders concerning the development of guidelines for specific categories.

B. Consolidated Tables on Existing and New Regulations

In response to public comment, the Agency has prepared a table that lists all existing effluent guidelines and standards and separately lists categories for which guidelines are planned or are being considered. These lists appear at appendix A of today's notice.

VIII. Public Comments

The public comment period for the proposal notice closed on October 25, 1988. The Agency received comments that covered approximately 40 topics from industries, an environmental group and on local government (POTW). For the most part, the comments submitted and the issues raised supported the general approach outlined in the notice. Several commenters suggested changes that the Agency has incorporated in today's notice. These changes are elaborated on below. The summary in this section highlights the more significant comments submitted. The administrative record for today's notice includes a complete text of the comments and the Agency's responses.

One commenter, the Natural Resources Defense Council (NRDC), commented adversely on several significant aspects of the proposal notice. NRDC has filed suit against the Agency, alleging that EPA has violated sec. 304(m) and other statutory authorities requiring the promulgation of effluent limitations guidelines, new source performance standards and pretreatment standards (*NRDC and Public Citizen, Inc.* v. *Reilly*, D.D.C. No. 89-2980).

A. NRDC Comments

1. Industry Selection Criteria

NRDC commented that, in its views, section 304(m) requires EPA to identify in the first 304(m) biennial plan *all* categories of sources discharging toxic or nonconventional pollutants for which guidelines have not been promulgated. If an industry discharges more than trivial amounts of toxic or nonconventional pollutants, NRDC commented that EPA must include that category in the first 304(m) plan and must promulgate guidelines for all such categories no later than February 1991. NRDC also commented that the only permissible criterion for inclusion of a category in a 304(m) plan is whether facilities in that category discharge toxic or nonconventional pollutants in more than trivial amounts.

For the reasons set forth in section III.A of today's notice, the Agency disagrees with NRDC's interpretation of sec. 304(m). The language of the statute contains nothing to the effect that, by February, 1991, EPA must promulgate guidelines covering all industry categories discharging more than trivial amounts of toxic or nonconventional pollutants. To the contrary, EPA believes section 304(m) establishes a continuing planning process under which new and revised guidelines will be published in phases.

NRDC's reading of the statute rests primarily on two sentences from the 1985 Senate Report on S. 1128, a predecessor to the Water Quality Act, to the effect that "[g]uidelines are required for any category of sources discharging significant amounts of toxic pollutants" and that "any non-trivial discharges from sources in a category must lead to effluent guidelines." [Senate Report No. 99–50 (99th Congress, 1st Session, 1985), pp. 24–25.] However, this language does not direct EPA to promulgate guidelines for all categories discharging more than trivial amounts of toxic or nonconventional pollutants by February, 1991, as NRDC urges. In addition, the Conference Committee report does not contain the language concerning "non-trivial" discharges on which NRDC relies so heavily.

Accordingly, EPA disagrees with NRDC's comments concerning the scope of section 304(m). The Agency believes it has discretion to determine, in the fashion laid out in this notice, which industry categories are to be included in the initial plan for development of new or revised guidelines, and which categories are to be included in future biennial plans.

2. EPA Screening Process

In its comments, NRDC criticized several aspects of EPA's screening process and the proposed criteria for selection of categories for the development of new or revised guidelines, as set forth in section V.B. of the August 25, 1988 notice (53 FR 32588). First, NRDC argued generally that the Agency improperly intends to apply the 304(m) process to determine *whether* to issue guidelines in particular industry categories. However, this is not the Agency's intention. EPA is using the 304(m) process to set *priorities* for the preparation of new or revised guidelines, not to determine that guidelines covering particular categories will never be issued.

Second, in the August 25, 1988 notice, EPA described the 304(m) process as including a review of available information, collection of new data and preparation of "decision documents." NRDC objected to the use of decision documents, arguing that they amount to a "regulatory cost-benefit analysis for deciding which categories should be subject to guidelines." However, EPA does not intend to use the decision documents, which have been renamed Preliminary Data Summaries, for that purpose. Preliminary Data Summaries are used to provide Agency decision makers with factual data and estimates that will be useful in applying the decision criteria set forth in today's notice. Thus the documents will assist in setting priorities for the initiation of guideline development.

3. Specific Criteria

NRDC also commented that many of the specific criteria that EPA included in the August 25, 1988 notice are "illegal." These comments were based partly on NRDC's assertion that the only permissible criterion for inclusion of an industry category in a 304(m) plan is whether that category discharges more than trivial amounts of toxic or nonconventional pollutants. NRDC also commented erroneously that EPA will use the criteria to determine whether or not a category of dischargers should be subject to national guidelines. As is stated above, the criteria are used to set relative priorities for the development of new guidelines and the revision of existing guidelines.

NRDC also commented that most of the criteria included in the August 25, 1988 are improper because they are not factors to be considered by EPA in promulgating technology-based guidelines. NRDC is correct that the criteria the Agency is using to determine the priority of rulemaking activities are not the same as the factors that the Agency is to consider under the Clean Water Act in setting technology-based guidelines. However, section 304(m) does not require the use of the factors set forth in sections 304(b) and 306 in setting rulemaking priorities. The Agency believes that the criteria considered in promulgating technology-based guidelines are not necessarily appropriate for determining rulemaking priorities. For example, the utility of a national guideline to permit writers is not a factor that the Agency must consider in promulgating technology-based guidelines, but it is relevant to efficient allocation of agency resources in developing guidelines to be used by permit writers in controlling the discharge of toxic and nonconventional pollutants.

In response to the comments of NRDC and others regarding the specific criteria included in the August 25, 1988 notice, EPA has refined and elaborated upon the criteria it intends to use in setting rulemaking priorities under section 304(m). (See section V.B.1 of today's notice.) In response to comments, the Agency also has provided greater detail in this notice regarding the definition of the critiera and how they are to be applied.

4. Listing of Specific Industries

NRDC also commented that the DSS and other studies demonstrate that numerous industry categories discharge significant amounts of toxic and nonconventional pollutants. From this, NRDC concludes that all such categories must be included in the initial 304(m) plan and guidelines for these categories must be published by February, 1991. EPA disagrees with the fundamental premise that all industry categories it knows discharge more than trivial amounts of toxics or nonconventionals must be included in the first 304(m) list. However, as is explained in the August 25, 1988 proposal and elsewhere in this notice, the Agency has considered the DSS and several other available studies as a source of information in formulating its plans to implement section 304(m).

5. Amendments to Existing Guidelines

NRDC contends that amendments are needed to a variety of existing guidelines and that the Agency must complete revisions of these guidelines by February 1991 at the latest. However, as the Agency stated in the August 25, 1988 notice, section 304(m) does not mandate the promulgation of revisions to existing guidelines within a specified time (53 FR 32589). EPA reads section 304(m) as providing the Agency with

discretion to determine which guidelines to revise, and to establish reasonable schedules for the promulgation of revisions. In listing categories for revision, EPA has applied the same set of criteria that are applicable to the listing of new industries.

B. Other Comments

1. Proposed Plan in General; Regulations for Existing vs. "New" Industries

Several commenters supported the general scheme proposed by the Agency for reviewing available data and setting rulemaking priorities. However, there were also recommendations that EPA concentrate initially on promulgation of regulations for industries not covered by any existing guidelines, and only after these are complete should the Agency consider revisions to existing guidelines.

The Agency believes that a combined approach—planning the development of guidelines for "new" categories along with revisions to existing guidelines—is more appropriate and consistent with section 304(m). The criteria that EPA is using to set rulemaking priorities can be (and have been) applied to evaluate all categories that are potentially subject to section 304(m), whether or not existing guidelines cover the category. A principal example is the pulp and paper industry, where newly-acquired data indicate that some plants are discharging highly toxic pollutants—dioxins and furans. The fact that the industry is covered by an existing effluent guideline is not persuasive if those regulations do not limit the pollutants of concern. The Agency will not delay revision of a regulation simply because other industries are not yet covered by effluent guidelines and standards.

2. Decision Documents (Preliminary Data Summaries)

One commenter requested clarification or definition of the term "decision document," as opposed to the already familiar term "development document."

EPA described the "decision document" in section V.B.3 of the proposal notice (53 FR 32588). The Agency has changed the name of the document to "Preliminary Data Summary" because the content and use of the document might be misunderstood. It represents a summary of information and preliminary technical findings which the Agency has obtained during its initial screening process to identify potential industry candidates and assist in establishing priorities for initiation of rulemaking, using the criteria described in section V.B.1 of today's notice. The content of a preliminary data summary provides Agency decision-makers with factual information in an organized format that supports application of the decision criteria. It is the intent of the Agency to make this information available as it is compiled.

In contrast, the "development document" is a more detailed compilation of background information on a particular industrial category for which a proposed or final rule has been developed. It is published at or about the time the rule is published in the Federal Register. This document provides an explanation of much of the information the Agency considered in developing the national effluent guideline or standard. Specific information in the document generally includes: A profile of the entire industry; a summary of all data collection activities conducted by the Agency, including the results of sampling, analysis and verification programs; an identification of particular wastewater characteristics; identification of the appropriate subcategories and pollutants regulated or excluded from regulation; a description of the various treatment technologies available and the options selected; and the overall results of related economic and environmental studies affecting the particular regulatory effort.

3. Rulemaking for Specific Industries

Five commenters recommended that the Agency consider revisions to existing regulations or promulgate new regulations for certain industries. The Agency considered all such comments in the development of the Effluent Guidelines Plan described in today's notice.

One of the regulations recommended for revision, Nonferrous Metals Manufacturing (40 CFR part 421), is the subject of an ongoing rulemaking action which is described in section IX of today's notices.

One commenter offered recommendations on a specific wastestream, landfill gas condensate, that EPA should include in a regulation for the Hazardous Waste Treatment category. As discussed in section VI of today's notice, the Agency plans to promulgate a regulation for this category, and will consider all potential waste streams as additional data are gathered and the proposed rule is developed. (The Phase 1 regulation will cover facilities treating aqueous hazardous wastes. The Phase 2 regulation—for which a schedule has not been developed—will cover landfill leachate discharges and hazardous waste incinerators.)

Other commenters recommended revisions to existing regulations for the Metal Finishing, and Mineral Mining and Processing categories, and initiation of a regulation covering offshore mining (dredging). None of these commenters submitted specific data to support their assertions, and the Agency's judgment on the recommended industries, based on the application of the evaluation criteria, is that their selection for new or revised regulations is not warranted at this time. As the Agency acquires and reviews new data on these or other industries, they will be taken into account in future biennial plans.

4. Validity of Data Sources

One commenter questioned the validity of information gathered from technical studies such as the DSS, Toxic Release Inventory data, and citizen complaints.

The Agency has clarified in section V.B.3 of today's notice how data obtained through the SARA program and citizen complaints will be used. Overall, EPA intends to use the technical findings from reports generated by other regulatory mechanisms such as SARA, or environmental concerns raised by citizen complaints, to assist in identifying or screening potential candidates for new or revised guidelines and standards. EPA does not intend to use data from these other sources without additional follow-up or further verification of their validity and reliability.

IX. Ongoing and Completed Actions

In section IV and appendix A of the proposal notice (53 FR 32589) the Agency listed existing regulations which were being revised or reviewed for possible revision. The Agency's plans with respect to three of those categories (Pharmaceutical Manufacturing, Timber Products and Textile Mills) are described in section VI.A of today's notice. Revisions to two regulations (Nonferrous Metals Forming and Aluminum Forming) have been promulgated since the August 25, 1988 notice. The two remaining categories (Nonferrous Metals Manufacturing and Copper Forming) are the subject of rulemaking activities in progress. These two were not among the 15 categories that EPA ranked, even though the pending rulemaking activities will continue, for the reasons stated below.

A. Completed Actions

1. *Nonferrous Metals Forming* (40 CFR part 471). EPA promulgated revisions to the Nonferrous Metals Forming regulation on March 17, 1989 (54 FR 11346). A technical correction to the regulation was published on April 4, 1989 (54 FR 13606).

2. *Aluminum Forming* (40 CFR part 467). EPA promulaged revisions to the Aluminum Forming regulation on December 27, 1988 (53 FR 52366).

B. Ongoing Actions

1. *Nonferrous Metals Manufacturing* (40 CFR part 421). EPA proposed revisions to the Nonferrous Metals Manufacturing Regulation on April 28, 1989 (54 FR 18412). The Agency has received public comments on the proposal and plans to promulgate a final rule by the spring of 1990. This category was not formally ranked because of the relatively limited nature of the rulemaking and because, as the Agency explained in detail in the 304(m) proposal notice, this rulemaking is the result of settlement agreements with industry. See 53 FR 32586 (August 25, 1988).

2. *Copper Forming* (40 CFR part 468). EPA also is preparing relatively limited amendments to the Copper Forming regulations as a consequence of a settlement agreement with a beryllium copper alloy manufacturer in *Brush Wellman, Inc.* v. *E.P.A.*, No. 84–1087 (7th Cir., September 29, 1984). Thus this category was not formally ranked. The Agency will propose one or more new subparts to the regulation for beryllium alloys in Spring 1990.

X. Future Process for Review of Existing Guidelines

The Agency has promulgated 51 regulations containing effluent guidelines, new source performance standards and pretreatment standards since 1974. Over time, revision of the guidelines and standards may be appropriate as a result of changes in industry production, the emergence of new control technologies, changes in the nature of wastewater discharges or non-water quality environmental impacts or other factors relevant to the statutory criteria for setting effluent limitations guidelines.

In the past, EPA has reviewed existing guidelines in the course of its regular activities implementing the Clean Water Act. For example, EPA acquires new information about categories of dischargers that are subject to existing guidelines through reports and other data sources of the type described in section V.B.3 of the final notice. In addition, communication with the Agency's field organization of regional offices, permit writing agencies in the 39 States that have delegated authority to issue NPDES permits, and POTWs whose influent includes industrial wastewater is an excellent source of information relevant to the review of existing guidelines. EPA meets regularly with States that administer the NPDES program, sponsors or participates in workshops attended by representatives of headquarters and regional offices, State agencies and municipalities. The topics covered may include budget and staff planning; changes in EPA policy; revisions to the NPDES permit issuance regulations (40 CFR parts 122 through 125), general pretreatment regulations (40 CFR part 403) or effluent guideline regulations; enforcement issues; or technical information on wastewater treatment. The application of effluent guidelines is integral to these discussions, and recommendations for revisions to regulations are sometimes raised. In preparing today's biennial plan, EPA has used these sources of information to review existing guidelines and select categories for revision and for further study.

The Agency has decided to adopt more formal procedures for future review of existing guidelines. Future reviews of existing guidelines will involve preparation of written nomination documents by EPA headquarters recommending guidelines for revision and development. The nominations will be based on public comments and data sources such as those described in section V.B.3 of today's notice. The recommendations will be circulated for evaluation and comment by EPA headquarters to its regional offices every January. This process will draw on the needs and experiences of the field staff in the regional offices and States who are engaged with headquarters in a working relationship in the NPDES program.

XI. Future Notices

A. Future Enhancements to the Effluent Guidelines Planning Process

EPA intends to continue its refinements to the priority-setting criteria described in today's notice. For example, the Agency is considering giving considerable weight in future biennial plans under section 304(m) to categories for which guidelines will yield substantial water quality benefits. Although it is difficult to obtain sufficient data to assess water quality impacts and their reduction during the preliminary study of an industry, the Agency will attempt to develop means of estimating the potential for improvement in water quality as a result of promulgating new or revised guidelines for a category. This will involve the development of sufficient information on the number and location of dischargers, the quantities and types of pollutants discharged, probable reductions in pollutant discharges and characteristics of the receiving stream to estimate water quality improvements that may result from promulgating an effluent guideline for an industry. Water quality improvement would not be used as a factor in setting technology-based limitations themselves.

B. Future Biennial Plans

EPA will publish another plan 24 months from today's notice, and biennially thereafter. The plan will contain revisions to the list of industries which are subject to review and/or rulemaking. Industries listed in today's notice for further study may be designated for rulemaking in the next 304(m) notice. In that notice and future notices, the Agency may also schedule rulemaking actions for other industries not listed in today's notice, based on public comments received and new data made available to the Agency.

C. Public Comment

The Agency invites public comment on all issues relating to the next biennial plan and future plans under section 304(m). Comments will be accepted until July 2, 1990. In particular, EPA invites comment on categories of dischargers that EPA should select in the next biennial plan for the preparation of new or revised guidelines. All categories discharging toxic or nonconventional pollutants are general candidates for rulemaking. As is explained in section V.A. of today's notice, in preparing future biennial plans under section 304(m), EPA intends to review and reevaluate all categories that may discharge toxic or nonconventional pollutants, but that are not among the priority categories for which new or revised guidelines will be prepared under today's biennial plan. EPA will collect additional data, as appropriate, and will determine which of these categories merit inclusion in future biennial 304(m) plans.

The eight categories of dischargers which the Agency ranked in section V.C.4, but for which the Agency has not decided to prepare new or revised guidelines, are specific candidates for the development of new or revised guidelines. These categories are Transportation Equipment Cleaning, Industrial Laundries, Stripper Oil and

Gas Extraction, Used Oil Reclamation and Re-Refining, Drum Reconditioning, Solvent Recycling, Hospitals and Paint Formulating. The Agency is continuing its study of each of these categories. See section VI.B.2. The three categories of dischargers for which the Agency is reviewing existing guidelines also are specific candidates for the preparation of revised guidelines. These categories are Petroleum Refining (40 CFR part 419), Timber Products Processing (40 CFR part 429) and Textile Mills (40 CFR part 410). The Agency's plans for review are discussed in more detail in section V.A.2 of today's notice. The remaining eight industry groups within the Machinery Manufacturing and Rebuilding Category (described in section V.C.4) will also be considered. If and when EPA decides to initiate rulemakings for these categories or others, it will identify them in a future biennial plan under section 304(m).

EPA will attempt to consider all comments submitted sufficiently in advance of the publication of the next biennial plan. Any comments that the Agency cannot consider (as a result of time constraints) will be considered in preparing the subsequent notice.

Comments on proposed guidelines for specific categories of dischargers will be accepted, as usual, according to the time periods specified in notices published as part of rulemaking proceedings to establish effluent guidelines for the categories.

XII. Economic Impact Assessment; OMB Review

This notice contains a plan for the review and revision of existing effluent guidelines and for the selection of priority industries for new regulations. This notice is not a rulemaking; therefore, no economic impact assessment has been prepared. EPA will provide economic impact analyses or regulatory impact analyses, as appropriate, for all of the future effluent guideline rulemakings developed by the Agency.

Today's notice has been reviewed by the Office of Management and Budget under Executive Order 12291.

Dated: December 20, 1989.

William K. Reilly,

Administrator.

Appendices

Appendix A—Master Chart of Industrial Categories and Regulations

Existing Effluent Guideline Regulations

This table lists all previously promulgated effluent guidelines and standards, whether or not they contain BAT limitations or new source performance standards. The Agency is publishing the table in this form to serve as a convenient reference document.

Category: Category Title of Regulation.
CFR: Code of Federal Regulations Part Number (under title 40).
Standards: Standards promulgated for the category.
Prom. Dt.: Date of Promulgation or most recent amendment.
Contact: Contact Person at EPA Industrial Technology Division.
Revise: Projected promulgation date for revised regulation.

Category	CFR	Standards	Prom. Dt.	Contact	Revise	Comments
Aluminum forming	467	BPT, BAT, NSPS, PSES, PSNS	12/27/88	George Jett		
Asbestos manufacturing	427	BPT, BAT, NSPS, PSES, PSNS	4/25/75	Thomas Fielding		
Battery manufacturing	461	BPT, BAT, NSPS, PSES, PSNS	8/28/86	Sabita Rajvanshi		
Builder's paper and board mills	431	BPT, BCT, BAT, NSPS, PSES, PSNS.	12/17/86	Jennie Helms		
Carbon black manufacturing	458	BAT, NSPS, PSNS	1/9/78	George Jett		
Cement manufacturing	411	BPT, BCT, BAT, NSPS, PSES, PSNS.	8/29/79	Ronald Kirby		
Coal mining	434	BPT, BAT, NSPS	10/9/85	Bill Telliard		
Coil coating	465	BPT, NSPS, PSES, PSNS	8/24/84	Ernst Hall		
Copper forming	468	BPT, BAT, NSPS, PSES, PSNS	6/20/86	George Jett		Revisions to be proposed Spring 1990.
Dairy products processing	405	BPT, BCT, NSPS, PSES, PSNS	7/9/88	Donald Anderson		
Electroplating	413	PSES	9/4/84	Sabita Rajvanshi		
Electrical and electronic components	469	BPT, BAT, NSPS, PSES, PSNS	1/31/85	Sabita Rajvanshi		
Explosives manufacturing	457	BPT	3/9/76	Thomas Fielding		
Feedlots	412	BPT, BAT, NSPS, PSES, PSNS	2/11/75	Donald Anderson		
Ferroalloy manufacturing	424	BPT, BCT, BAT, NSPS, PSNS	7/9/86	George Jett		
Fertilizer manufacturing	418	BPT, BCT, BAT, NSPS, PSNS	7/29/87	Thomas Fielding		
Fruits and vegetables processing	407	BPT, BCT, NSPS, PSES, PSNS	7/9/86	Donald Anderson		
Glass manufacturing	426	BPT, BCT, BAT, NSPS, PSNS	7/9/86	Wendy Smith		
Grain mills manufacturing	406	BPT, BCT, NSPS, PSES, PSNS	7/9/86	Donald Anderson		
Gum and wood chemicals manufacturing	454	BPT	5/18/78	Richard Williams		
Hospitals	460	BPT	5/6/76	Frank Hund		to be reviewed.
Ink formulating	447	BPT, BAT, NSPS, PSNS	7/28/75	Richard Williams		
Inorganic chemicals	415	BPT, BAT, NSPS, PSES, PSNS	9/25/84	Thomas Fielding		
Iron and steel manufacturing	420	BPT, BCT, BAT, NSPS, PSES, PSNS.	5/17/84	Ernst Hall		
Leather tanning and finishing	425	BPT, BCT, BAT, NSPS, PSES, PSNS.	3/21/86	Donald Anderson		
Meat products	432	BPT, BCT, PSES, PSNS	7/9/86	Donald Anderson		
Metal finishing	433	BPT, BAT, NSPS, PSES, PSNS	11/7/86	Sabita Rajvanshi		
Metal molding and casting	464	BPT, BAT, NSPS, PSES, PSNS	6/16/86	Ernst Hall		
Mineral mining and processing	436	BPT	3/10/78	Matt Jarrett		
Nonferrous metals forming and metal powders	471	BPT, BAT, NSPS, PSES, PSNS	4/4/89	George Jett		
Nonferrous metals manufacturing	421	BPT, BAT, NSPS, PSES, PSNS	1/21/88	Ernst Hall	Spring 1990.	Revisions proposed 4/28/89.
Oil and gas extraction	435	BPT	7/21/82	Karen Troy		Revisions proposed 8/26/85.
(Offshore subcat.)					1992	
(Coastal subcat.)					1995	Request for comments 11/8/89.

Category	CFR	Standards	Prom. Dt.	Contact	Revise	Comments
(Stripper subcat.)						to be reviewed.
Ore mining and dressing	440	BPT, BAT, NSPS	5/24/88	Matt Jarrett		
Organic chemicals, plastics and synthetic fibers	414	BPT, BAT, NSPS, PSES, PSNS	6/29/89	Woody Forsht	1993	
Paint formulating	446	BPT, BAT, NSPS, PSNS	7/28/75	Richard Williams		to be reviewed.
Paving and roofing materials (tars and asphalt)	443	BPT, BAT, NSPS, PSNS	7/24/75	Bill Telliard		
Pesticide chemicals	455	BPT	9/29/78			
(Manufacturing subcategory)				Thomas Fielding	1992	
(Formulating/Packaging subcat.)				Janet Goodwin	1994	
Petroleum refining	419	BPT, BCT, BAT, NSPS, PSES, PSNS.	8/12/85	Woody Forsht		to be reviewed.
Pharmaceutical manufacturing	439	BPT, BCT, BAT, NSPS, PSES, PSNS.	12/16/86	Frank Hund	1994	
Phosphate manufacturing	422	BPT, BCT, BAT, NSPS	7/9/86	Thomas Fielding		
Photographic	459	BPT	7/14/76	Ernst Hall		
Plastics molding and forming	463	BPT, BCT, BAT, NSPS, PSES, PSNS.	12/17/84	Woody Forsht		
Porcelain enameling	466	BPT, BAT, NSPS, PSES, PSNS	9/6/85	George Jett		
Pulp, paper, and paperboard	430	BPT, BCT, BAT, NSPS, PSES, PSNS.	12/17/86	George Health	1995	
Rubber manufacturing	428	BPT, BAT, NSPS, PSNS	4/25/75	Joseph Vitalis		
Seafood processing	408	BPT, BCT, NSPS, PSES, PSNS	7/9/86	Donald Anderson		
Soap and detergent manufacturing	417	BPT, BAT, NSPS, PSES, PSNS	2/11/75	Woody Forsht		
Steam electric power generating	423	BPT, BCT, BAT, NSPS, PSES, PSNS.	7/8/83	Joseph Vitalis		
Sugar processing	409	BPT, BCT, NSPS, PSES, PSNS	7/9/86	Donald Anderson		
Textile mills	410	BPT, BAT, NSPS, PSES, PSNS	9/1/83	Richard Williams		to be reviewed.
Timber products processing	429	BPT, NSPS, PSES, PSNS	2/12/81	Richard Williams		to be reviewed.

Additional Categories for Which Guidelines are Being Prepared or Considered

Category	Contact	Under review*	Promulgation date
Drum Reconditioning	Ernst Hall	X	
Hazardous Waste Treatment, Phase 1	Debra DiCianna		1995
Industrial Laundries	Frank Hund	X	
Machinery Manufacturing and Rebuilding	Sabita Rajvanshi		1995
Solvent Recycling	Debra DiCianna	X	
Transportation Equipment Cleaning	Ernst Hall	X	
Used Oil Reclamation and Re-Refining	Woody Forsht	X	

*Under Review: Agency is reviewing data on industry. EPA will determine whether or not new guidelines will be prepared and will announce its determinations in future biennial plans under CWA sec. 304(m) and in the *Regulatory Agenda*.

Appendix B—Preliminary Data Summary Ordering Information

Copies of Preliminary Data Summaries referred to in today's notice may be purchased in microfiche or printed form, by writing to the following address: National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, Telephone (703) 487–4650.

Specify the NTIS Accession Number(s) when ordering.

Document title	NTIS accession No.
Preliminary Data Summary for the Coastal/Onshore/Stripper Subcategories of the Oil and Gas Extraction Category.	PB90–126434
Preliminary Data Summary for the Drum Reconditioning Industry.	PB90–126491
Preliminary Data Summary for the Hazardous Waste Treatment Industry.	PB90–126517
Preliminary Data Summary for the Hospitals Point Source Category.	PB90–126459
Preliminary Data Summary for Industrial Laundries.	PB90–126541
Preliminary Data Summary for the Machinery Manufacturing and Rebuilding Industry.	PB90–126525
Preliminary Data Summary for the Paint Formulating Point Source Category.	PB90–126475
Preliminary Data Summary for the Pesticide Chemicals Point Source Category.	PB90–126426
Preliminary Data Summary for the Pharmaceutical Manufacturing Point Source Category.	PB90–126533
Preliminary Data Summary for the Pulp, Paper and Paperboard Point Source Category.	PB90–126442
Preliminary Data Summary for the Solvent Recycling Industry.	PB90–126467
Preliminary Data Summary for the Transportation Equipment Cleaning Industry.	PB90–126483
Preliminary Data Summary for the Used Oil Reclamation and Re-Refining Industry.	PB90–126509

[FR Doc. 89–30252 Filed 12–29–89; 8:45 am]

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federal register

Tuesday
January 2, 1990

Part III

Department of Agriculture
Department of Labor

7 CFR Part 1e
29 CFR Part 503
Determination of the Shortage Number Under Section 210A of the Immigration and Nationality Act; Final Rule

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1e

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 503

RIN 1290-AA10

Determination of the Shortage Number Under Section 210A of the Immigration and Nationality Act

AGENCIES: Office of the Secretary, United States Department of Agriculture; Office of the Secretary, United States Department of Labor.

ACTION: Final rule.

SUMMARY: The United States Department of Agriculture (USDA) and the United States Department of Labor (DOL) (hereinafter "the Departments") are promulgating final regulations regarding the procedure to be used by the Secretaries of Agriculture and Labor (hereinafter "the Secretaries") for the determination of the number (if any) of additional aliens who should be admitted to the United States or who should otherwise acquire the status of aliens lawfully admitted for temporary residence under section 210A of the Immigration and Nationality Act (INA), as added by section 303 of the Immigration Reform and Control Act of 1986 (IRCA), to meet a shortage of workers to perform seasonal agricultural services (SAS), including calculation of the annual numerical limitation on such workers. This final rule also establishes the procedure through which a group or association representing employers in SAS may appeal to the Secretaries for an increase in the shortage number. Further, this final rule sets forth the procedure through which a group of agricultural workers, admitted or adjusted under section 210A of the INA, may petition the Secretaries for a decrease in the number of workdays of work required in order to maintain their temporary resident alien status.

EFFECTIVE DATE: January 2, 1990. The paperwork requirements of this rule established in subparts C and D are effective January 22, 1990, provided they have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980, as amended. If they are not approved by January 22, 1990, a notice will be published in the **Federal Register** delaying the effective date.

FOR FURTHER INFORMATION CONTACT: Mr. Gary B. Reed, DOL, Telephone (202) 523-6007, or Mr. Al French, USDA, Telephone (202) 447-4737.

SUPPLEMENTARY INFORMATION: The INA was amended by the IRCA to (1) control illegal immigration into the United States and (2) make limited changes in the system for legal immigration. There was concern during consideration of the IRCA that employers in SAS, who had come to rely on unauthorized aliens to perform field work, would be unable to obtain sufficient legal workers to satisfy their needs.

To address this concern, the IRCA added section 210 of the INA to establish a program that grants temporary resident alien status to special agricultural workers (SAWs) who can demonstrate that they performed SAS for at least 90 man-days during the 12-month period ending May 1, 1986. The definition of SAS is contained in regulations promulgated by the Secretary of Agriculture at 7 CFR part 1d. The IRCA specifies that individuals admitted under this provision are not required to continue working in agriculture, and in fact are free to seek employment in any occupation or industry.

Because there was also concern that large numbers of SAWs would in fact leave agricultural employment, which would again cause a shortage of workers to perform SAS, the IRCA added section 210A to the INA, which provides a system for admitting additional special agricultural workers, known as replenishment agricultural workers (RAWs). The number of RAWs who may be admitted in any fiscal year (FY), beginning with FY 1990 and ending with FY 1993, is the smaller of (1) the annual numerical limitation established by formula in section 210A(b) of the INA, or (2) the shortage number determined by the Secretaries in accordance with the formula in section 210A(a) of the INA. This final rule sets forth the procedure to be used by the Secretaries in determining the shortage number and the annual numerical limitation. The criteria under which individuals may qualify for RAW status are established by the Immigration and Naturalization Service (INS) in regulations located at 8 CFR part 210a.

Paperwork Reduction Act

Subsequent to the publication of the proposed rule on this matter, it was determined that subparts C and D of this rule constituted information collection under the Paperwork Reduction Act of 1980. In accordance with that Act, the reporting requirements imposed upon the public by these rules have been submitted to the Office of Management and Budget (OMB) for approval, and will become effective upon such approval. The Secretaries have requested an expedited review of their submission under the Act, to be completed within 20 days of the date of publication in the **Federal Register**. A copy of the submission is being separately published in the **Federal Register** for the convenience of the public.

The public reporting burden for this collection of information results from two distinct types of requests that can be made to the Secretaries. The first is associated with requests by representatives of growers who use, or may use, SAWs in SAS, who are seeking an increase in the shortage number. The other relates to requests which may be made by a group of RAWs who are seeking a decrease in the number of work-days during which they must perform SAS in order to maintain their temporary resident status under the INA. The Secretaries anticipate receipt of only a modest number of requests in either category. While no specific form or format is established, such requests must show that unanticipated circumstances have resulted in a significant increase or decrease in the shortage number, and in the case of requests for an increase in the shortage number, must report on the reasonable recruitment efforts that have been conducted to obtain workers. Public burden for the collection of information is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, Department of Labor, room N-1301, 200 Constitution Avenue NW., Washington DC 20210; and to the Office of Management and Budget, attention Desk Officer for Office of the Secretary, room 3001, Washington, DC 20503.

History of This Regulation

On August 11, 1989, a notice of proposed rulemaking and request for comments concerning this regulation was published in the **Federal Register** at 54 FR 32985. The comment period expired September 8, 1989. Comments received after the close of the comment period have been considered fully. While the number of comments received was small, some of those comments were submitted by organizations

representing grower associations, and others represented worker advocacy groups. Comments were received from the following:

1. Senator Alan K. Simpson and Representative Howard L. Berman, United States Congress.
2. Florida Citrus Mutual, Lakeland, Florida.
3. American Farm Bureau Federation, Farm Labor Alliance, National Council of Agricultural Employers, National Council of Farmer Cooperatives, and United Fresh Fruit And Vegetable Association.
4. Farmworker Justice Fund, Inc., California Rural Legal Assistance, Inc., and AFL–CIO.
5. Illinois Nurserymen's Association, Springfield, Illinois.
6. Representative Vic Fazio, United States Congress.
7. Representative Robert F. Smith, United States Congress.
8. Senator Slade Gorton, United States Congress.
9. Senator Pete Wilson, United States Congress.
10. Senator Pete V. Domenici, United States Congress.
11. Representative Leon E. Panetta, United States Congress.

The Comments focused primarily on whether recruitment and increased wage payment may be required of employers seeking workers under the RAW program, the procedure and quality of the surveys to be used, and the procedure for seeking an emergency increase in the shortage number.

Discussion of Comments

Determination of Shortage Number and Annual Numerical Limitation

The INA requires that before the beginning of each FY, starting with FY 1990 and ending with FY 1993, the Secretaries shall determine jointly the number (if any) of additional aliens who should be admitted to the United States or who should otherwise acquire the status of aliens lawfully admitted for temporary residence to meet a shortage of workers to perform SAS. The number so determined is referred to as the "shortage number." The INA further provides that the Attorney General shall provide for the admission for lawful temporary resident status, or for the adjustment of status to lawful temporary resident status, of a number of aliens equal to the shortage number (if any). Such number may not exceed the annual numerical limitation established by section 210A(b) of the INA.

The annual numerical limitation is a limit, set by a statutory formula, on the number of aliens who may be admitted or who otherwise may acquire lawful temporary resident alien status under the provisions of INA which permit the entry of RAWs for employment in SAS. The annual numerical limitation is based upon a percentage of those individuals who had their status adjusted under the SAW program established by section 210 of the INA, less the number of SAWs, including RAWs, who continue to work in SAS, and must be adjusted to take into account any change in the number of nonimmigrant aliens admitted under section 101(a)(15)(H)(ii)(a) of the INA (H–2A workers) to perform temporary SAS. It is noted that the proposed rule in § ____.8 stated inadvertently that the annual numerical limitation must be adjusted to reflect any change in the "utilization" of H–2A workers. The Secretaries note that section 210A(b)(1)(C) requires that the annual numerical limitation shall be increased or decreased to reflect any numerical increase or decrease in the "number" of aliens admitted under the H–2A program to perform SAS in a FY. It is clear from the language of the statute that the annual numerical limitation is to be adjusted to reflect any change in the number of aliens admitted under the H–2A program, and aliens who perform work under more than one H–2A contract are not to be counted as more than one alien. Consequently, § ____.8 has been changed to delete the term "utilization" and to make clear that the annual numerical limitation is to be adjusted to reflect the number of aliens admitted under the H–2A program to perform SAS in a relevant FY.

This rule sets forth the procedures to be used by the Secretaries in determining the shortage number. Any aliens to be admitted as a result of a determination that a shortage of workers to perform SAS exists are known as RAWs and will be admitted under criteria established by the INS in regulations located at 8 CFR part 210a.

The shortage number is determined under a statutory formula and consists of (1) the projected need for labor to perform SAS, stated in work-days, minus (2) the projected supply of such labor, stated in work-days, divided by (3) the work-day per worker factor as determined by the Director of the Bureau of the Census (hereinafter "the Director").

This rule also sets forth the responsibilities of the Federal agencies involved in the process. USDA under § ____.11 of this regulation will provide certain data needed in order for the Secretaries to determine the level of need for workers to perform SAS. DOL will provide data on the supply of such workers as indicated in § ____.12 of this regulation.

One set of commenters took issue with a letter from the Departments written to Commissioner Nelson of INS. The commenters charged that the letter, which asked that INS begin preparations so that they could respond to a labor shortage, if such shortage was determined to exist, was evidence that the Secretaries were pre-disposed to finding a shortage of workers. The letter, of course, is outside of this rulemaking and not appropriate for comments. The Secretaries, however, want to assure all concerns that they were not pre-disposed toward issuance of a shortage number and that the letter was intended to encourage a level of readiness by INS, in the event that a shortage was determined to exist, or in the event of an emergency shortage determination at some time during the duration of the program.

One set of commenters raised several issues concerning the manner in which the Bureau of the Census was responding to responsibilities imposed upon it by section 210A of the INA. The procedures of the Bureau of the Census, however, are not the subject of this rulemaking and the responsibilities assigned to the Bureau of the Census were merely restated in the proposed rule to facilities a clear understanding of the entire process. No changes have been made in those portions of the rule which repeat the responsibilities given to the Director by the INA.

Some commenters stated that California, Texas, and Florida, the primary sources of migratory agricultural labor for the nation, are currently reporting substantial surpluses of such workers. They contended that, given this apparent oversupply of available agricultural labor, there is very little justification for a shortage number being declared for FY 1990. The issue of what the shortage number (if any) should be for a particular FY is not the subject of this rule, but, rather, the procedure for making that determination. Section 210A(a)(1) of the INA requires the Secretaries to determine jointly the shortage number, if any, before the beginning of each FY beginning with FY 1990 and ending with FY 1993, applying the statutory criteria, regardless of whether there was an apparent under-supply, or over-supply, of workers in specific geographic areas at specific times during the prior FY.

These commenters also raised the issue of whether reported surpluses of agricultural labor in specific geographic areas at specific times during the prior FY should preclude a determination of a

shortage number for a FY. In accordance with section 210(a)(3) of the INA, this regulation at § ____.4 provides that the Secretaries may not determine that there is a shortage unless the Secretaries determine, based on the criteria set forth at § § ____.5 and ____.6 of this rule, that there will not be sufficient able, willing, and qualified workers available to perform SAS required in the FY involved. In other words, the Secretaries will determine a shortage if, and only if, the application of the criteria indicate a shortage of able, willing, and qualified workers to perform SAS. Section 210A(a)(3) does not contemplate consideration of criteria other than those set forth in § § ____.5 and ____.6. The formula for the shortage number is designed to forecast the number of RAWs needed to meet a shortage, if any, of workers to perform SAS in a FY. In determining the shortage number, the formula, in essence, balances the projected need for workers to perform SAS against the projected availability of able, willing, and qualified workers to perform SAS for all regions of the country for a full FY. Reported surpluses of agricultural labor in specific geographic areas at specific times of the previous FY do not necessarily reflect accurately the availability of able, willing, and qualified workers to perform SAS in the subsequent year. The experience in California, Texas, and Florida during August 1989 is instructive. The Secretaries note that August is in the "off season," a period of relatively low employment for SAS in Florida and parts of Texas and California. Thus, such reported surpluses do not necessarily reflect the availability of workers to perform SAS for the nation for the entire FY. Congress chose to use a formula to forecast the need for RAWs rather than have the Secretaries rely on reports of labor shortages or surpluses from particular areas at particular times of the year.

In this regard it is useful to understand something about the availability of farmworkers in the United States as described in the Agricultural Work Force Supplement (AWFS) to the December 1985 Current Population Survey conducted by the Bureau of the Census, which was before Congress during consideration of IRCA, (The Agricultural Work Force of 1985; ERS Agricultural Economic Report No. 582, p-2, 5, 6). (The AWFS provides relatively good coverage of domestic farm workers, but it probably enumerates few unauthorized aliens or other aliens who return to their countries of origin during the off-season, either because they have returned home before the survey is conducted in the month of December, or because they avoid the Census enumerators.) The total number of persons employed on farms in 1985 was estimated at 2.522 million. Farm work is characterized in large part by unstable and short-term employment largely due to the seasonal nature of agriculture, and has periods of peak labor use such as during the harvesting of crops included in SAS. Even so, the AWFS revealed that only two-thirds of the reported total number of hired farm workers were employed in July. This indicates that over 830,000 people who did some farm work during that year were not employed on farms during the peak agricultural employment season.

It is also true that temporary or part-time farm workers do only a minority of the total farm work. According to the AWFS of 1985, those workers who worked on farms less than 150 days (two-thirds of the total) performed just under one quarter of all the farm work during that year in the nation. Still, at any given time, large numbers of people who do farm work are not working on farms.

Contrary to the view that the terms "farm worker" and "migrant" are synonymous, the AWFS found that a small minority of the persons employed on farms in 1985 stayed overnight to work one or more days in a county other than the county in which they reside. While this number has fluctuated from year to year, it is clear that many persons have no desire to leave home in order to engage in farm work. Furthermore, the fact that farm workers and other rural unemployed may be available for work in an area does not necessarily mean they are willing to leave their home areas to make themselves available to other areas. The number of farm workers or other persons receiving unemployment benefits in an area is not necessarily a reliable measure of the availability of workers. It is possible that unemployed farm workers or other persons looking for work may be available for certain jobs, but are not qualified or are unwilling to perform the specific jobs for which workers are needed.

All of these considerations are considered implicitly in the formula for determining the anticipated supply of workers to perform SAS in a FY. In addition, to determine the shortage number, if any, the number of work-days performed in SAS is susceptible to change as a result of movement of workers out of SAS, anticipated increased wages, improved working conditions, enhanced recruitment, increased retention, growth or contraction in the seasonal agricultural industry, economic competitiveness of the perishable agricultural industry, activities of government employment service agencies, and changes in technology and personnel practices. Such changes are being surveyed and analyzed by the Secretaries in order to determine the shortage number for each FY. This provides a comprehensive basis for determining shortages of labor to perform SAS that is in conformity with section 210A of the INA and which is the means by which Congress chose to determine whether there will be sufficient able, willing, and qualified workers available to perform SAS in the FY involved.

Some commenters took the view that the SAS industry should be required to conduct enhanced recruitment with increased wages and improved working conditions before the Secretaries may make a determination that there is a shortage of labor to perform SAS. Other commenters took the opposite view that nothing in the INA requires agricultural employers to provide any specific level of wages, working conditions, or recruitment effort, and that no such enhancements by the industry are a necessary condition for a determination by the Secretaries that a labor shortage exists. These commenters stated that section 210A(a)(5)(D) of the INA prohibits the Secretaries from requiring employers to provide any specified level of wages, working conditions, or recruitment effort.

This rule reflects the procedure for the shortage number determination provided by the INA. Section 210A(a)(5)(C)(ii) of the INA provides that the Secretaries, in determining the anticipated supply of labor in SAS for a FY, shall consider "the effect, if any, of enhanced recruitment efforts by employers of such workers and government employment services in the traditional and expected areas of supply of such workers * * *." The INA, therefore, contemplates that the prohibition on employment of unauthorized aliens may result in enhanced worker recruitment efforts and improved employment services. Accordingly, the rule provides that, in determining the anticipated labor supply, the Secretaries shall among other things consider the projected effect of enhanced recruitment efforts. Thus, while recruitment efforts by employers and government employment services is a factor to be considered in determining the anticipated labor supply, the INA does not require, as a prerequisite for making any

determination that a shortage number exists, that the Secretaries first determine that employers in SAS or government employment services have taken affirmative steps to recruit an adequate labor force.

Similarly, section 210A(a)(5)(C)(i) of the INA provides that the Secretaries, in determining the anticipated supply of labor in SAS for a FY, shall consider "the effect, if any, that improvements in wages and working conditions offered by employers will have on the availability of workers to perform seasonal agricultural services, taking into account the adverse effect, if any, of such improvements in wages and working conditions on the economic competitiveness of the perishable agricultural industry." Thus, while the Secretaries are to consider the effect, if any, that improvements in wages or working conditions will have on the availability of workers to perform SAS, the INA does not require, as a prerequisite for making a determination that a shortage number exists, that the Secretaries first determine that employers in SAS have offered increased wages and improved working conditions.

Section 210A(a)(5)(D) of the INA provides that "[n]othing in this subsection shall be deemed to require any individual employer to pay any specified level of wages, to provide any specified working conditions, or to provide for any specified recruitment of workers." As stated above, the INA does not contemplate that the Secretaries determine, prior to issuance of any shortage number, that employers have first provided specified wages or recruitment, or even that they provided any increases. Some commenters also argued that the Secretaries had exceeded their authority under subsection 210A(a) of the INA in defining "reasonable recruitment efforts" for purposes of the emergency procedure for an increase in the shortage number. The Secretaries disagree. Section 210A(a)(7)(C) requires that the Secretaries, in making their determination on an emergency request by a group or association representing employers for an increase in the shortage number, take into account reasonable recruitment efforts having been undertaken. The Secretaries have defined what recruitment efforts are "reasonable." The provisions of § ____.20 of this rule do not require any individual employer to pay any specified level of wages, offer any specified working conditions, or perform any specified recruitment of workers. Rather, the Secretaries have clearly set forth their views on what constitutes reasonable recruitment so that requesters will understand the factors to be examined by the Secretaries in reaching their determination on an emergency request. The Secretaries believe, therefore, that the emergency procedures set forth in § ____.20 of this rule do not violate section 210A(a)(5)(D) of the INA.

One set of commenters questioned the statement in § ____.7(b) of the proposed rule which indicates that only those individuals who worked at least 15 work-days in SAS will be included in determining the average work-day per worker factor. They agreed that the 15 day "screen" was appropriate when calculating the annual numerical limit, but claimed it was not appropriate for use in other calculations.

Upon further review of the legislative history of the IRCA, the Secretaries have determined that the 15 day screen was intended by Congress to apply only to the calculation of the annual numerical limitation. The Conference Report on IRCA states:

> It is the intent of the Conferees that, *for purposes of calculating the annual numerical limitation* on replenishment agricultural workers admissions (section 210(A)(c) [sic], the term "at any time" means the number of workers who have worked at least 15 man-days in seasonal agriculture.

H.R. Conf. Rep. No. 99–1000, 99th Cong., 2d Sess. 96, reprinted in 1986 U.S. Code Cong. & Admin. News 5840, 5852 (emphasis added).

Because the above quoted language in the Conference Report specifically refers only to the application of the 15 day screen for purposes of the calculation of the annual numerical limitation provision, and not for purposes of any other provision, the Secretaries have concluded that Congress intended that the 15 day screen be applied only to the calculation of the annual numerical limitation, and the Director's estimate of the employment of SAWs, which is a component of the annual numerical limitation.

The phrase "performed seasonal agricultural services at any time during the fiscal year" is also used in section 210A(a)(6)(A)(i) of the INA, discussing the calculation of the work-day per worker factor for FY 1990; however, the phrase is not used in section 210(a)(6)(B), which discusses the calculation of the work-day per worker factor for FY 1991–1993. The Secretaries have determined that Congress did not intend the 15 day screen to apply to the calculation of the work-day per worker factor for FY 1990, nor to the calculation of the work-day per worker factor for FY 1991–1993. Thus, §§ ____.7 and ____.13 of the rule have been changed to eliminate the 15 day screen in the calculation of the work-day per worker factor.

Because of the unexpectedly large number of SAW applicants, the INS has indicated that it will not be able to make final determinations on all SAW applications prior to the beginning of FY 1990. One commenter suggested that § ____.8 of the rule be modified regarding the "starting number" used in calculating the annual numerical limitation so that the Secretaries would prorate the SAW applications to denials among those that have been adjudicated. This method was considered by the Secretaries in drafting the proposed rule but was abandoned as unauthorized by the statute. Section 210A(b)(1)(A)(i) of the INA limits the Secretaries to using only the number of individuals whose status "was adjusted under section 210(a)." Nothing in the statute nor the legislative history provides the Secretaries with the authority to go beyond the plain language of the statute. It was also recognized that the early high approval ratio may not be sustained under INS procedures. No change has been made in how the "starting number" is to be established, nor in how it is to be updated.

The above commenter was joined by another in asking that the rule explicitly provide for the "recapture" in subsequent years of the number of aliens prevented from achieving RAW status because the annual numerical limitation was determined from only approved SAWs. The Secretaries must determine the shortage number each FY, by using a statutory formula which takes into account many factors—including utilization of any SAWs or RAWs in the current FY; if the annual numerical limitation ceiling prevented adjustment of RAWs to satisfy a shortage the previous FY, the need for RAWs should be reflected in the shortage number for the current FY.

The proposed rule set forth a procedure for determining the annual numerical limitation which, in effect, provided for the "recapture" of RAWs and which is consistent with the plain language of the INA, which limits the Secretaries to using only the number of aliens whose status has been adjusted under section 210(a).

In the event a final determination has not been made on all applications, in order to establish the numerical limitation, the Secretaries will calculate the annual numerical limitation based upon the number of aliens finally

adjudicated (approved) as SAWs as reported by INS to the Director, and the number of such SAWs who performed SAS during the FY. The Director will advise the Secretaries, by September 1 of each year, of the number to be used in the calculation, based upon the latest available INS data. The Secretaries will announce the annual numerical limitation in the **Federal Register** at the time the shortage number is announced.

Until such time INS is able to complete its adjudication of all SAW applications, the Secretaries, prior to the end of each of the following fiscal quarters, will recalculate the annual numerical limitation by including in the "starting number" all those aliens who have been finally adjudicated as SAWs subsequent to any earlier determinations of the annual numerical limitation, and by adjusting the number of SAWs who worked in SAS in the prior FY to take into account the increase in the number of additional workers who obtained SAW status.

If the annual numerical limitation is low enough to serve as an effective upper limit on the number of RAWs to be admitted (in other words, if the annual numerical limitation is lower than the shortage number), any increases in the annual numerical limitation that result from the recalculations will permit entry or adjustment of additional RAWs until the shortage number is reached, or the annual numerical limitation is again an effective limit. In addition, if an emergency increase in the shortage number is granted pursuant to § ____.20 of these regulations, but additional RAWs are barred from entry due to the annual numerical limitation, the Secretaries wil recalculate the annual numerical limitation based upon the most recent data available from INS and the Director. These procedures will continue until all SAW applications are adjudicated.

While this procedure may not allow for the "recapture" in subsequent years of all aliens prevented from achieving RAW status because the annual numerical limitation was determined from only approved SAWs, due to the declining nature of the formula, this procedure is the best method authorized by the INA.

One set of commenters complained with respect to § ____.11 and § ____.12 that they did not have the opportunity to comment on the procedure to be used in conducting the surveys that would yield data for making the shortage number determinaion. Further, they faulted the design of the surveys, stated that there was an absence of information about surveying possible effects of enhanced recruitment, then charged that the Secretaries could not use the data and could not make the determination because no public input had been received in establishing these procedures. They also commented that the surveys had been implemented prior to rulemaking.

This rule establishes procedures which the Secretaries will use to make the shortage number determination. After enactment of IRCA, the Secretaries were aware that, in order to make the estimates prescribed by the statute to determine the shortage number, it would be necessary to do a great deal of preparatory work. This work included study of the IRCA and its requirements, obtaining any additional expertise necessary about the industry, a review of available data sources, design of the surveys with input from experts in the field, hiring of contractors to perform surveys, all in time to determine the shortage number by the end of FY 1989. Thus, it was necessary for the basic surveys to be in place and functioning by the end of FY 1988. Although the USDA was able to use its established surveys with modifications, in the case of DOL it was necessary, after review of available data sources, to develop entirely new surveys. This process by its nature was very time consuming, and is still on-going. The nature of the issues, and the fact that much of the data has never before been collected, necessitate flexibility in the process so that mid-course correction can be made quickly as the need arises and as the Secretaries learn more about the industry and the work force, and how they are responding to the changes in the immigration laws. In fact, as discussed below, studies of the effect of enhanced recruitment and the impact of wage adjustments on the availability of workers are still under way. The surveys necessarily were initiated early in order to assure that adequate data would be available for the decision making process.

However, while it is true that the surveys were initiated prior to publication of this rule, the public, particularly representatives of those affected by the process, have been included in development of the surveys. The Secretaries have made special efforts to keep the public informed and to provide an opportunity for public input into the process. For example, three individuals affiliated with the organizations represented by the commenters were among the 10-member group of agricultural industry representatives, farm worker representatives, and academicians brought together to advise DOL on the design and conduct of the surveys. Further, USDA and DOL have attended numerous meetings to discuss the surveys, including meetings with the California Agricultural Employment Work Group. USDA also presented survey information to data user meetings in California, Florida, Michigan, New York, Oregon, and the District of Columbia. Input received during these hearings were taken into consideration in finalizing the surveys. Approval was also obtained from statisticians within the OMB.

The survey designs implemented for preparing estimates of "need" and "supply" by the Secretaries were based upon accepted statistical procedures for making inferences about the population of field workers hired in SAS as required by IRCA. Both Departments used probability surveys to estimate the components of the shortage number. This permitted computation of sampling errors and measurement of survey reliability. The survey procedures were developed subject to several constraints including staff and funding; data confidentiality; respondent burden; and a short development period for survey procedures before operational use in FY 1988. Survey procedures were pretested in the field and reviewed by survey respondents, field staff, and statisticians. The Departments also received input from users of agricultural data.

The Departments were aware of the importance of integrating estimate components and endeavored to achieve that goal. Survey design alternatives were evaluated and developed with this as an objective while still providing the necessary flexibility to estimate each component.

The USDA estimate of need focused on agricultural employers as the target sampling unit from the Quarterly Agricultural Labor Survey. This probability survey has been operational since 1975. A stratified sample design was used to efficiently collect data and appropriately represent the total labor use in United States agriculture. List stratification was based on grouping potential sampling units by size of operation based on peak employment of agricultural workers or economic size of farm (since large farms hire more workers). A land use area sample accounted for any incompleteness of the list universe. Pretest results supported the premise that reliable survey data on current labor use was best obtained from employers. Large operations, which account for over fifty percent of hired agricultural workers, maintained the best records. Additional questions

concerning the factors of technology, personnel practices, and economic crop loss were also determined to be best answered by the employer. The survey procedures including design, sampling, survey instruments, and estimation have been provided to the public in open meetings and upon request.

The DOL designed two probability surveys, the National Agricultural Worker Survey and the Potential Agricultural Worker Survey. The survey designs focused on estimating the available work force by targeting the hired worker or potential worker as the sampling unit. This was the best approach, determined by pretesting, to make inferences of the target worker population. Limited resources also impacted the survey design specifications. Data were expanded based on selection probabilities and appropriate response adjustments. Survey procedures developed by DOL and the contractor were subjected to review and comment by respondents, employers, farmworker representatives, statisticians, and agricultural labor data users in addition to the OMB clearance procedures. The worker entry and exit rates were estimated using a ratio estimator to improve reliability of estimates with sample size constraints. This will improve during subsequent years as the sample size increases with more longitudinal data collected from additional respondents.

In referring to the alleged lack of any attempt by the Secretaries to survey the potential impact of enhanced recruitment, some commenters cited inaction on a proposed study involving Washington State. These commenters are correct in reporting that the proposal did not lead to the conduct of a study in the State of Washington. However, the contractor that proposed the Washington study has joined together with other individuals to initiate a scientific study of the effect of enhanced recruitment in California, Texas, Florida, and Puerto Rico. DOL is funding that study. In addition, DOL has funded major pilot projects on the effect of enhanced recruitment by the California Employment Development Department and the Texas Employment Commission.

At another point in their comments, some of the commenters, in objecting to the design of the DOL National Agricultural Worker Survey, cited a June 1988 draft document prepared by a University of California professor. This draft document described the survey population as being selected by ranking or weighting groups of counties within regions according to the number of seasonal workers reported as employed by the 1982 Census of Agriculture. These commenters failed to ascertain that the draft document was revised, in August 1988, after review by DOL staff associated with the surveys, to correctly describe the selection process as being based upon labor expenditures, rather than the number of workers. Therefore, data developed from the DOL survey will be compatible with the USDA survey.

It is the view of the Secretaries that the surveys necessary to develop the estimates used in determining the shortage number have been designed and conducted in an open and professional manner, with maximum public input consistent with the constraints imposed by the task. Formal rulemaking was not first conducted because of the time constraints and because of the need for a flexible process in order that mid-course modifications could be made. Furthermore, initial benchmarks had to be determined to create a basis for comparison. Thus, some studies had to be initiated in the prior FY. However, the Secretaries have now reviewed the comments received on the process with a view towards determining whether additional modifications are now appropriate. The Secretaries have determined that the estimates utilized in determining the shortage number derive from statistically valid methods, as required by the INA. No changes have been made in § ____.11 or § ____.12 of the rule.

Two commenters have suggested that an error in drafting the section 210A(a)(6) of the INA has resulted in language which the Secretaries have interpreted, in § ____.13 of the rule, to mean that only the experience of RAWs, and not SAWs, may ordinarily be considered in determining the work-day per worker factor applicable after FY 1990. The Secretaries find no evidence of such a drafting error. The statute specifically provides that the work experience of "special agricultural workers whose status is adjusted under section 210" is to be used in calculating the work-day per worker factor with respect to FY 1990, and "special agricultural workers who obtained lawful temporary resident status under this section" (section 210A)—i.e., RAWs—with respect to succeeding FYs. The language of the Act is, therefore, unambiguous; SAWs are to be used in calculating the work-day per worker factor for FY 1990, and only RAWs are to be used in calculating the work-day per worker factor for FY 1991–1993. Nothing in the IRCA nor the legislative history provides evidence that this is a drafting error.

One commenter suggested that a literal reading of section 210(a)(6)(B) and (C) does not make sense when read in conjunction with section 210(A)(b)(2), which requires employers to report the number of days worked by both SAWs and RAWs for the duration of the program. However, the information from the mandatory reports is also used by the Director in making the annual estimate of employment under section 210A(b)(3) of the INA, which requires information to be reported on both SAWs and RAWs. This commenter also suggested that the House Judiciary Committee Report indicates that the calculation of the number of RAWs to be admitted in FY 1991–1993 shall include both SAWs and RAWs. However, the passage from the report quoted by the commenter refers only to the calculation of the annual numerical limitation and not the work-day per worker factor. H.R. Rep. No. 99–682, 99th Cong., 2d Sess. 87–88, reprinted in 1986 U.S. Code Cong. & Admin. News 5649, 5691–92.

No change has been made in the rule in this regard. However, § ____.13 of the regulation has been revised to state that the Director will use the procedures in §§ ____.13(a)(1) or ____.13(a)(2) to determine the work-day per worker factor if no RAWs are admitted, or have their status adjusted, in a particular FY, or if so few RAWs are admitted or have their status adjusted as to be statistically unrepresentative, or if RAWs are admitted or have their status adjusted so late in a FY as to render their work experience inappropriate as a measure for estimating future work force needs; in such situations, using only RAWs would not only be an unsound statistical procedure, but would also be impossible or impracticable, and would result in a factor which is not consistent with the legislative intent. Calculating the work-day per worker factor on the basis of the work days reported for SAWs in the previous year would be one of the options available to the Director.

One set of commenters suggested that the Secretaries are not required to announce their determination prior to October 1, 1989, and should not make a determination until they have a full year of data upon which to make their decision. The INA requires the Secretaries to make their determination of the shortage number prior to the beginning of the next FY, but requires that the determination be based upon data from the current FY. Thus, the statute has provided the Secretaries

with an apparently impossible task of gathering data for an entire FY ending September 30, and issuing a determination prior to October 1, the beginning of the next FY.

In order to meet the statutory deadline, the Secretaries have modified § ____.14. To deal with this situation, and in recognition of the fact that the determinations can only be the Secretaries' best estimate, the Departments may, where appropriate, collect and use data through the third fiscal quarter of each FY, then add to it data received from the fourth quarter of the prior FY. While this will be the procedure for most of the period of the RAW program, certain data applicable to FY 1990 will be incomplete because the statutory reporting requirements were not in effect during the fourth quarter of FY 1988. Thus, data from only the first three quarters of FY 1989 will be available in time to make the initial determination for FY 1990. In addition, information concerning the number of aliens adjusted to SAW status will be the most current number provided by INS and the Director prior to issuance of the annual numerical limitation.

Emergency Procedures

In recognition of the uncertainties associated with agricultural production, the INA contains emergency procedures for adjusting the shortage number. These regulations establish the procedure through which a group or association representing employers in SAS may appeal to the Secretaries for an emergency increase in the shortage number. While the request may be made by a group or association which is experiencing a shortage of workers in a particular area or region, the process is not designed or intended to deal with localized, short-term problems that individual farmers may have in obtaining needed workers. To succeed in obtaining an increase in the shortage number, the requesters must demonstrate that, as a result of extraordinary, unusual, and unforeseen circumstances, a significant increase in the shortage number, which is determined on a national basis, is appropriate. The emergency procedures may be applied in cases of an unanticipated bumper crop, a significant change in weather conditions or cropping patterns, or other significant changes that could not reasonably have been predicted or accounted for in the original determination of the shortage number for a FY. They must show that the labor needed to avoid crop damage or other loss is significantly greater than the availability of able, willing, qualified, and unemployed SAWs, rural low skill, or manual laborers, and domestic agricultural workers. In addition, requesters must describe the recruitment efforts undertaken to obtain workers to meet the shortage in order for the Secretaries to evaluate the reasonable recruitment efforts undertaken and determine the availability of workers. The Secretaries are aware that extensive recruitment efforts may not be taken in every instance because, for example, requesters may know that other growers may have recently conducted recruitment in an area of traditional and expected labor supply without obtaining workers.

The Secretaries have determined that a reasonable recruitment effort includes recruiting in the region or regions of traditional and expected labor supply for the location and crop(s) of the requester, offering wages, working conditions, and other terms of employment, including, but not limited to, housing, transportation, meals, and subsistence, comparable to or better than those provided generally in the same or comparable occupations and crops in the labor market area, and that the normal hiring qualifications for such occupations and crops were applied. The information which the Secretaries will collect under Subpart C, related to the emergency procedure, has been determined to be subject to the Paperwork Reduction Act of 1980. In accordance with that Act, the reporting requirements imposed upon the public by these rules have been submitted to the OMB for approval, and will become effective upon such approval.

Section 210A(a)(7)(C) of the INA requires that the Secretaries make their decision on the emergency request within 21 days of receipt of the request. Because of this short time within which to make the decision, interested parties will have only 10 days from publication of notice in the **Federal Register** in which to provide information in support of, or opposition to, the request. The Secretaries will use the information submitted, as well as any other information available to the Departments, to evaluate the request. USDA and DOL staff will meet to evaluate the request and any comments that may have been submitted by interested parties as well as any other information available to the Departments. Staff members may contact regional and local offices of DOL and State Employment Service Agencies, USDA's Agricultural Marketing Service, the Extension Service, and the National Agricultural Statistics Service, in the alleged shortage areas and in the areas of traditional and expected labor supply for the location and crops of the requesters, and elsewhere, to obtain currently available information regarding the labor supply and crop conditions. The Secretaries are under a very tight time frame for making the determination. As a result they will not be able to conduct original surveys nor research. They will make their determination after evaluating current information obtained from requesters, the commenters, and others.

In making the determination on the emergency request, the Secretaries will first determine whether the requester has met the burden of a showing required by § ____.20(b) and (c); if a requester has made such a showing, the Secretaries will determine the extent to which able, willing, and qualified workers are available to meet the shortage. In making the determination of the availability of workers to meet the shortage, the Secretaries will determine on the basis of the available information, whether able, willing, and qualified workers are available to work at the time and place needed to meet the shortage. Therefore, if there is a showing of a shortage in a particular region, the Secretaries will determine the extent to which able, willing, and qualified workers are available to work in that region to meet the shortage.

The Departments may use any information available to determine whether able, willing, and qualified workers are available to meet any shortage. As noted previously, the fact that farm workers and other rural unemployed may be available for work in one area does not necessarily mean that they are willing to leave their home area to make themselves available to other areas, nor is the number of farm workers or other persons receiving unemployment benefits by itself a reliable measure of the availability of workers, because they cannot be required to accept jobs beyond a reasonable commuting area. Although requesters are not required to recruit outside of traditional and expected areas of labor supply, able, willing, and qualified workers located outside such areas may be considered available if the Secretaries determine that such workers are available to work in the region of the requesters.

The Secretaries will utilize the following procedure to assist in determining the availability of able, willing, and qualified SAS workers: During the period in which the Secretaries are considering the request, anyone with knowledge of able, willing,

and qualified workers available to the region of the requesters should provide specific written information regarding such worker availability to the Secretaries as soon as possible. During this period, the Departments will advise on a daily basis an agent, if designated by the requesters, of the reports of the availability of workers both within and outside the traditional and expected areas of labor supply. By this process, the Secretaries intend that requesters will be made aware of any able, willing, and qualified workers willing to perform SAS in their region whether or not such workers are located in traditional and expected areas of labor supply to that region. This process will also help workers outside of the traditional and expected areas of labor supply to be aware of job opportunities in the region of the requesters. While requesters are not required to recruit in areas outside of traditional and expected areas of labor supply, it is anticipated that, where feasible and fruitful, requesters will desire to do so. Similarly, it is anticipated that persons desiring to work in the region of the requesters will make themselves available. If requesters engage in such enhanced recruitment efforts, the results of such efforts will be considered highly significant to the Secretaries when determining the availability of workers.

To the degree that such enhanced efforts are successful, or workers make themselves available to the region of the requesters, the number of additional SAS workers needed will be reduced or eliminated. On the other hand, if workers reported to be available fail to respond to reasonable recruitment efforts, the Secretaries may consider such efforts to be highly significant evidence that workers are not in fact available in that area. The Secretaries anticipate that this process will produce significant empirical evidence in place of estimates regarding whether or not able, willing, and qualified SAS workers are available. However, there is no requirement that this process be used, and if not used, the Secretaries will make their determination based upon any information which may be available.

In considering the above process, the Secretaries recognize the need for other interested parties to be able to receive the same information which will be provided daily to the agent designated by the requesters. However, these parties are more diverse and it is difficult to determine appropriate representatives. Accordingly, the Secretaries will also consider requests by representatives of other groups of interested persons who desire notification on the same basis as the designated agent of the requesters, and will provide such notice if the requests are limited to a reasonable number. This limitation on the receipt of individual requests for information relates to those who may receive daily reports from the Departments and there will be no limitation upon the access of any persons or groups who wish to provide information regarding the availability of workers to the Secretaries. The specifics of how such information may be provided will be published in the **Federal Register** as a part of the announcement of the request for an emergency shortage determination. While information in support of, or in opposition to, an emergency determination request must be submitted within ten calendar days after publication of the notice in the **Federal Register**, this does not allow time for requesters or other interested parties to receive reports of availability of workers, engage in recruitment efforts based upon these reports, and report to the Secretaries the results of such efforts.

Accordingly, the Secretaries will continue to accept such reports, on recruitment efforts only, after the 10 calendar day time period has expired and up to the time the Secretaries designate in the **Federal Register**.

The Secretaries also encourage potential requesters to provide early notification of potential shortages in order that the Secretaries may facilitate the locating of available workers, through the voluntary procedure described above, in advance of an emergency. If such early notification is received, the Secretaries will publish a notice in the **Federal Register** so that others may provide information on availability of workers, to be provided to the agent of the requesters.

The regulation has been revised at § ____.20 in accordance with the above discussion to clarify the nature of the initial showing which must be made by the requesters, and to set forth the optional additional recruitment procedures.

In discusing the emergency procedures in § ____.20, one set of commenters noted the need for the Secretaries to specify that job actions, such as strikes, or other work stoppages, must not be regarded as labor shortages. The Secretaries agree and have added language to § ____.20(i) to indicate that the Secretaries will subtract from any emergency shortage number determination the number of jobs that are vacant because of a strike or other labor dispute involving a work stoppage, or a lockout.

One set of commenters noted that section 210A(a)(7) of the INA provides that an emergency shortage may be found when there occurs a significant decrease below the average number of workdays of SAS performed by aliens who were recently admitted (or whose status was recently adjusted). These commenters suggested that the phrase "recently admitted (or whose status was recently adjusted)" should be defined to mean only RAWs who have been adjusted or admitted for the first time in the year in which the emergency determination is requested. (Such definition of "recently" would also affect section 210A(a)(8) of the INA which provides for decreasing the number of work-days in SAS required each year of RAWs). The Secretaries have determined that the definition suggested by commenters would be inappropriate because of the difficulty, potential cost, and reporting burdens which would be required in order to measure contemporaneously changes in the average work-day per worker, and because there may not be sufficient data to be reliable in any event. These complications may be avoided by using data already available to the Secretaries by allowing for the lag of two calendar quarters until the data from ESA–92 employer reporting forms becomes available. Accordingly, the Secretaries will consider "recently admitted (or whose status was recently adjusted)" for purposes of § ____.20 and § ____.30 of this rule, to mean RAWS who were admitted (or whose status was recently adjusted) during the last five fiscal quarters (or such longer period as the Director determines is necessary to include sufficient number of RAWs for a statistically reliable estimate), and for whom there exist at least two full fiscal quarters of reported work days. The Director must have at least two full fiscal quarters of reported work-days in order to determine the work-day per worker factor by extrapolation.

The proposed rule at §§ ____.20(b)(3) and ____.30(b)(3) did not contain the phrase "recently admitted (or whose status was recently adjusted)." These provisions have been changed to include this phrase as defined above.

Some commenters asserted that, in the event the shortage number determination made at the beginning of a FY resulted in a projected surplus in the supply of workers to perform SAS, any emergency petition should require the requesters to prove that the projected surplus in the supply of workers has been exhausted and that a

shortage has developed. The Secretaries believe that such an approach would be inconsistent with the purpose of the emergency procedure. The determination on an emergency request will be made on the basis of availability of workers. A projected surplus may indicate that workers may be available and information regarding areas of such projected surplus will be reviewed carefully to determine whether workers are in fact available to meet an emergency shortage. However, requesters will not be required to show that their need exceeds the projected surplus before an emergency increase in the shortage number will be considered. It is possible for a shortage, due to unforseen developments, to occur in the face of an estimated surplus of workers which was based upon the experience of a different FY. Indeed, the purpose of an emergency procedure for an increase in the shortage number is to make appropriate corrections during the FY to the shortage number estimated prior to the beginning of that FY. One of the premises of the SAW program was "to guarantee growers a ready supply of nondomestic replenishment agricultural workers * * *." [132 Cong. Rec. H9713 (daily ed. October 9, 1986) (statement of Rep. Mazzoli)]. Furthermore, the Secretaries are charged only with determining whether and to what extent a shortage exists, not with determining the extent of any surplus, and, therefore, do not intend to publish a negative shortage number. Thus, the appropriate criterion for the determination of an emergency increase in the shortage number should be, assuming all other criteria have been met, the number of workers necessary to avoid crop damage or loss, based on the showing required by §§ ____.20 (b) and (c), regardless of whether a surplus of workers was projected for that FY.

Some commenters stated that Congress intended that the shortage number determination, whether made at the beginning of a FY or during an emergency shortage procedure, would be based on a national, FY basis, and not on the basis of a temporary shortage of workers experienced by employers in a particular locality or region. These commenters also noted that the definition of "the shortage number" is constant throughout the statute. The Secretaries agree that the shortage number is a national number.

Any emergency determination of an increase in the shortage number is necessarily a change in the shortage number for that FY. However, the emergency request provisions are intended to remedy unforeseen shortages caused by conditions which by their nature are regional, and are intended to make appropriate corrections in the shortage number. The provisions do not contemplate a recalculation of the statutory formula.

Congress did not intend the emergency procedure to be utilized for localized, short-term problems that individual farmers may have in obtaining workers to perform SAS. However, the legislative history [H. Report 99-682, p. 87] also indicates that the emergency increase provision was to prevent crop damage or loss and should apply in cases of an unanticipated bumper crop, a significant change in weather conditions or cropping patterns, or other significant changes that could not have been reasonably predicted or accounted for in the original determination of the shortage number for a FY. These changes are typical of those which occur on a regional, rather than national, basis. Furthermore, the requesters cannot be expected to have definitive data regarding whether there is a shortage or a surplus of available workers outside of the areas of traditional labor supply for the location and crops of the requesters. Therefore, the Secretaries have determined that it is reasonable and appropriate to accept regionally based emergency requests for an increase in the shortage number. However, information submitted or otherwise available regarding the availability of able, willing, and qualified workers, wherever located, to perform the work in question will be considered in determining whether to grant an emergency request for an increase in the shortage number. The emergency procedure was not intended to be utilized unless a significant increase in the shortage number is needed as a result of a significant increase in the need for, or decrease in the supply of able, willing, and qualified workers to perform SAS, or a significant decrease in the number of work-days of SAS, performed by recently admitted or adjusted RAWs.

Some commenters suggested that the appropriate region and the appropriate group or association of employers who may request an emergency shortage determination should be specifically defined. The Secretaries will accept requests from any group or association representing employers. The Secretaries believe it unnecessary to specifically define group or association. Rather, the Secretaries will review the information submitted to determine whether the showing required by these regulations has been demonstrated. Similarly, the Secretaries will accept requests from any group of RAWs who request a decrease in the work-day requirement for RAWs pursuant to § ____.30, and review the information to determine whether the required showing has been demonstrated.

Some commenters stated that the emergency procedure for increase in the shortage number of the proposed rule authorized employers to engage in recruiting efforts that are unreasonably limited in scope and, therefore, unlikely to attract sufficient number of workers. They requested requirements for enhanced recruiting, utilization of the Job Service, and increased wages and working conditions. Other commenters claimed that the requirement of recruiting factors such as the offering of wages, working conditions and other terms of employment equal to or better than those provided generally in the labor market area goes beyond the statutory authority of the Secretaries. Specifically, these commenters argued that § ____.20 of the proposed regulation suggests that requesters must prove a specified level of recruitment effort before an emergency determination can be made and that this violated section 210A(a)(5)(D) of the INA.

Section 210A(a)(7) of the INA requires that the Secretaries take into account reasonable recruitment efforts having been undertaken, prior to granting any emergency request for an increase in the shortage number. Nothing in § ____.20 of this rule violates 210A(a)(5)(D) of the INA. The Secretaries have not required specific recruiting factors or efforts. The Secretaries recognize that an offer of recruitment factors less than comparable or the failure to recruit in regions of traditional and expected supply in most circumstances, could not be considered reasonable recruitment efforts. This rule does not require offers of better recruitment factors, but neither does it limit recruitment offers to that which is comparable. Indeed, if better than comparable recruitment factors or efforts are demonstrated, it would be considered by the Secretaries to be significant evidence of reasonable recruitment efforts having been undertaken or, such evidence could be considered to mitigate shortcomings regarding other factors. For example, higher wage offers could, under some circumstances, offset fringe benefits or other perquisites which were less than comparable. Furthermore, although not required, if requesters demonstrate that they have undertaken reasonable recruitment efforts in regions of the country where a surplus of workers has been reported but which are outside of traditional areas of labor supply for the

location and crop(s) of the requesters, this will be considered significant evidence that workers are not in fact available in that area.

The Secretaries believe that the definition of reasonable recruitment efforts in § ____.20(c) is appropriate. Nevertheless, the Secretaries do not intend § ____.20(c) to require requesters for an emergency increase in the shortage number to provide any specified level of wages, any specified working condition, or any other specified terms of employment. Rather, requesters are required to show what recruitment efforts were undertaken, so that the Secretaries can evaluate the reasonableness of the recruitment efforts undertaken. The extent to which requesters have undertaken reasonable recruitment efforts will be a factor in determining the availability of workers. The Secretaries' decision on whether to grant an emergency request will not rest solely on the reasonableness of the recruitment efforts.

Other commenters contended that the proposed recruitment requirement of the emergency procedure is beyond the statutory authority of section 210A of the INA and they expressed concern that a similarity of certain terms could be interpreted as a replication of the H-2A certification process or interstate clearance system. As stated above, the emergency procedure provisions of section 210A(a)(7) of the INA require the Secretaries to take into account reasonable recruitment efforts having been undertaken. The Secretaries recognize that the Congress intended the SAW program to be an alternative to other farm labor programs. Thus, there is no intent by the Secretaries to carry over requirements of other agricultural labor programs, such as the H-2A program or the interstate clearance system.

Some commenters stated that the INA does not require a "showing," as provided in § ____.20(c), of recruitment efforts, but simply requires the Secretaries to take into account reasonable recruitment efforts having been undertaken rather than, as provided in § ____.20(c), reasonable recruitment efforts of able, willing, and qualified unemployed SAWs, rural low skill or manual laborers, or domestic agricultural workers. The Secretaries believe the language specifying appropriate types of potential workers in § ____.20(c) is reasonable. The requesters are in the best position to demonstrate the recruitment efforts that have been undertaken. Section 210A(a)(7)(C) of the INA requires a determination by the Secretaries within 21 days of a request for emergency determination. The intent of § ____.20(c) is that requesters of an emergency determination provide the information necessary for the Secretaries to evaluate within the 21 day period the reasonable recruitment efforts undertaken, rather than a requirement to show recruitment efforts directed specifically toward each of the appropriate types of potential workers listed in § ____.20(c). On the other hand, a failure of the requesters to recruit able, willing, and qualified workers from among any of the types of potential workers listed in § ____.20(c) will be considered highly relevant in evaluating the reasonable recruiting efforts undertaken. The Secretaries believe also that reasonable recruitment efforts among able, willing, and qualified unemployed SAWs, rural low skill or manual laborers, or domestic agricultural workers is appropriate because these are the categories of workers which affect the determination of supply in section 210A(a)(5) of the INA.

Some commenters suggested that "traditional and expected areas of labor supply" should be defined to be the main "source" states for migrant labor including Florida, Texas, and California. They stated also that it is reasonable to expect employers to engage in nation-wide searches for workers under the emergency determination procedure. The Secretaries believe that reasonable recruitment efforts should include efforts conducted in at least the areas of traditional and expected areas of labor supply for the location and crops of the requesters, but that it is not reasonable for the Secretaries to specify the particular states or areas in which requesters must conduct their recruitment efforts. However, this does not prohibit requesters from engaging in additional recruitment efforts and the Secretaries will take such efforts into account in their evaluation of the reasonable recruitment efforts undertaken and in their determination of the availability of workers.

Several commenters stated that the proposed regulations regarding an emergency shortage determination require a showing of both increased need and a showing of a decrease in the availability of workers in SAS. They claimed this was beyond the authority of the statute. The proposed rule did not require a showing of both increased need and a showing of a decrease in the availability of workers. The final rule has been revised to make clear that requesters may show either a significant increase in the need for SAWs in the FY or a significant decrease in the availability of able, willing, and qualified workers, or a significant decrease in the work-day per worker factor.

Some commenters suggested that the Secretaries provide RAWs with information regarding the geographic location of any shortage that triggers an emergency shortage determination. The Secretaries have been advised that INS plans to provide RAWs, at their interview, with information on the dates and locations of the various SAS activities in the United States. The INS will also refer RAWs who desire placement assistance to state job service offices and will provide names and addresses of RAWs who sign Privacy Act waivers to the United States Employment Service (USES) to facilitate outreach efforts. Thus, RAWs nationwide may be accessed by employers through the interstate clearance system operated by the USES and affiliated State Employment Service Agencies. Requesters granted an emergency increase in the shortage number will naturally recruit among RAWs admitted because of any emergency determination. The Secretaries note, however, that RAWs are free to accept any employment they choose.

These regulations also set forth the procedure through which a group of RAWs may petition the Secretaries for a decrease in the number of work-days of work required in order to maintain their temporary resident alien status and in order to be eligible for naturalization. The information which the Secretaries will collect under Subpart D, relating to the decreased work-day requirement, has been determined to be subject to the Paperwork Reduction Act of 1980. In accordance with that Act, the reporting requirements imposed upon the public by these rules have been submitted to the OMB for approval, and will become effective upon such approval.

RAWs are required by subparagraph (A) of section 210A(d)(5) of the INA to perform SAS for at least 90 work-days in each of the first three years after the alien obtained the status of an alien lawfully admitted for temporary residence, in order to avoid deportation. (Note: the first year period begins on the date the alien obtained lawful temporary resident status; the second, one year after such date; and the third, two years after such date). Furthermore, subparagraph (B) of section 210A(d)(5) of the INA provides that such an alien may not be naturalized, unless that alien has worked at least 90 work-days in SAS in each of five years after obtaining

the status of an alien lawfully admitted for temporary residence.

Section 210A(a)(8) of the INA provides that, after the beginning of a FY, a group of RAWs may request the Secretaries to decrease the number of work-days required under section 210A(d)(5) of the INA, with respect to the FY involved. The requesters must show that extraordinary, unusual, and unforeseen circumstances have resulted in a significant decrease in the shortage number with respect to that FY due to a significant decrease in the need for SAWs in the FY, a significant increase in the availability of able, willing, and qualified workers to perform SAS, or a significant increase, above the work-day per worker factor applicable to the FY, in the number of work-days of SAS performed by recently admitted or adjusted RAWs. It is contemplated that such a reduction in the work-day requirement for a FY may be warranted, for example, in the event of a significant oversupply of workers to perform SAS due to limited employment opportunities in SAS, such as might be caused by extreme weather conditions. This procedure is not intended to deal with localized, short-term problems that certain groups of RAWs may have in fulfilling their work-day requirements.

Note.—Section 210A(a)(8) of the INA, in setting forth the procedure for a RAW to request a change in the work-day requirement, refers to subparagraphs (A) and (B) of section 210A(d)(2), but that is a typographical error, since subsection (d)(2) has no subparagraphs (A) nor (B). Such subparagraphs are found only in subsection (d)(5).

No later than 3 business days after the request is received, the Secretaries shall provide notice in the **Federal Register** of the substance of the request and shall provide the opportunity for interested parties to submit information on a timely basis. The time allowed for the receipt of such information will be set by the Secretaries in the notice, taking into account the number of calendar days remaining in the FY and the Secretaries' desire to act expeditiously on such requests. Before the end of the FY, provided the request is received before September 1, the Secretaries, after consideration of any information submitted on a timely basis with respect to the request and any information available to the Secretaries, including information obtained from the Director concerning the work-day per worker factor, shall make their determination on the request and provide for notice in the **Federal Register.** The request shall be granted and the required number of work-days for the FY shall be reduced if, and by the same proportion as, the Secretaries determine that a decrease in the shortage number is justified based on the showing and circumstances described in § ____.30(b) of this rule.

The same change that was made in § ____.20(b) has been made in § ____.30(b), including the term "or" after § ____.30(b)(1), to make it clear that the requester group of RAWs need only show one of the factors. Also, in conformity with § ____.20(b)(3), § ____.30(b)(3) has been changed to state that the requester may show that extraordinary, unusual, and unforeseen circumstances have resulted in a significant decrease in the shortage number with respect to that FY due to a significant increase, above the work-day per worker factor applicable to the FY, in the number of work-days of SAS performed by recently admitted or adjusted RAWs. The phrase "recently admitted or adjusted" means those RAWs admitted within the last 5 fiscal quarters (or such longer period as the Director determines is necessary to include sufficient numbers of RAWs for a statistically reliable estimate), for whom there exists at least two full fiscal quarters of reported work-days. This definition is necessary for the reasons set out in the discussion of § ____.30(b)(3) above.

The INA states that the determination of the Secretaries on a request for a decrease in the work-day requirement is to be made before the end of the FY concerning the work-day requirement for the FY. The rule at § ____.30 has been amended to allow such requests to be made until 90 days after the end of the FY, to be applied retroactively to the previous FY. The work-day requirements which RAWs must fulfill to maintain their status as alien lawfully admitted for temporary residence and for naturalization commence with the date that the particular RAW obtained lawful temporary resident status. Thus, if the Secretaries make a determination reducing the work-day requirement for a particular FY, the date the FY begins (October 1) will not generally coincide with the date that the particular RAW obtained lawful temporary resident status. The Commissioner of INS is responsible for the determination of whether a particular RAW has met the work-day requirement of section 210A(d)(5), and, thus, the Commissioner will determine whether and how any reduction in the work-day requirement for a particular FY will apply to particular RAWs.

These regulations were developed in consultation with the Department of Justice and the Bureau of the Census.

Administrative Procedure Act Findings

The Secretaries believe that they have complied with the notice and comment requirements of the Administrative Procedure Act. However, to the extent that it might be argued that further comment was required with respect to the development of the surveys utilized in developing the estimates which make up the components of the formula for determining the shortage number, the Secretaries find good cause to dispense with such procedures in that in the circumstances herein were and are impracticable, unnecessary, and contrary to the public interest. As discussed above, it was necessary that these surveys be under way by the end of FY 1988. Furthermore, the process of developing the estimates is of necessity an inexact one, requiring the exercise of discretion on the part of the Secretaries, and timely adjustments in the process as it develops, so that a determination can be made by the end of each FY. This process is incompatible with a procedure which is fixed until additional rulemaking procedures are completed. Furthermore, as discussed above, the Secretaries obtained substantial public input in the process as it was designed and implemented.

In addition, the Secretaries have determined that good cause exists within the meaning of the Administrative Procedure Act, 5 U.S.C 553(d), for making this rule effective upon publication in the **Federal Register.** The statute requires that the Secretaries make their determination of the first shortage number prior to the beginning of FY 1990. Therefore, the regulation must be in effect immediately. Furthermore, a group or association representing employers of individuals who perform SAS may request an emergency increase in the shortage number at any time after the beginning of the FY. Therefore, it has been determined that good cause exists for making the regulation effective immediately. The only action contemplated by the public is with regard to those who may wish to make an emergency request. It is in the public interest for such employers and those workers who may be impacted by the granting of such a request, to have information on how to make a request and/or how the request will be handled by the Secretaries, as soon as possible.

Executive Order 12291; Regulatory Flexibility Act

The USDA and the DOL have determined that this rule is not a major rule under Executive Order 12291. They

have also determined that this rule will not have a significant economic impact on a substantial number of small entities. This rule is largely procedural in nature and sets forth the manner in which the USDA and the DOL will use available information, including INS information and Bureau of the Census estimates, to make certain determinations regarding whether there is a shortage of workers in the United States to perform SAS, and related determinations. Consequently, the USDA and DOL certify under the Regulatory Flexibility Act that the rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 1e and 29 CFR Part 503

Agriculture, Aliens, Immigration, Labor, Migrant worker, Rural labor.

DEPARTMENT OF AGRICULTURE

7 CFR Part 1e

Accordingly, title 7 of the Code of Federal Regulations is amended by adding part 1e as set forth at the end of this document.

PART 1e—DETERMINATION OF THE SHORTAGE NUMBER UNDER SECTION 210A OF THE IMMIGRATION AND NATIONALITY ACT

Subpart A—General Provisions

Sec.

Subpart B—Procedure for Determination of the Shortage Number

Subpart C—Emergency Procedure for Increase in Shortage Number

Subpart D—Procedure for Decreasing the Work-day Requirement

Authority: 8 U.S.C. 1161.

Done at Washington, DC, this 27th day of December 1989.

Roland R. Vautour,

Acting Secretary of Agriculture.

DEPARTMENT OF LABOR

29 CFR Part 503

Accordingly, title 29 of the Code of Federal Regulations is amended by adding part 503 as set forth at the end of this document.

PART 503—DETERMINATION OF THE SHORTAGE NUMBER UNDER SECTION 210A OF THE IMMIGRATION AND NATIONALITY ACT

Subpart A—General Provisions

Sec.

Subpart B—Procedure for Determination of the Shortage Number

Subpart C—Emergency Procedure for Increase in Shortage Number

Subpart D—Procedure for Decreasing the Work-day Requirement

Authority: 8 U.S.C. 1161.

Done at Washington, DC, this 27th day of December 1989.

Elizabeth Dole,

Secretary of Labor.

Text of the Joint Rule

The text of the joint rule as adopted by USDA and DOL in this document appears below.

PART ___DETERMINATION OF THE SHORTAGE NUMBER UNDER SECTION 210A OF THE IMMIGRATION AND NATIONALITY ACT

Subpart A—General Provisions

§ ___.0 Introduction.

(a) Section 210 of the Immigration and Nationality Act (INA), as added by section 302 of the Immigration Reform and Control Act of 1986 (IRCA), established the special agricultural worker (SAW) program. Under this program, aliens could apply (during the 18-month period ending November 30, 1988) to have their status adjusted to that of an alien lawfully admitted for temporary residence, provided they could demonstrate residence in the United States and performance of seasonal agricultural services (SAS) for at least 90 man-days during the 12-month period ending May 1, 1986. While employment in SAS was required in order to qualify for SAW status, there is no requirement that SAWs continue to work in agriculture. Because SAWs may seek employment in any occupation or industry, the INA provides a framework for admitting additional aliens to work in SAS if a shortage of workers develops.

(b) Pursuant to section 210A(a)(1) of the INA, before the beginning of each fiscal year (FY), beginning with FY 1990 and ending with FY 1993, the Secretaries of Agriculture and Labor (the Secretaries) shall determine jointly the number (if any) of additional aliens who should be admitted to the United States or who should otherwise acquire the status of aliens lawfully admitted for temporary residence under section 210A of the INA during the FY to meet a shortage of workers to perform SAS. Such number is known as the "shortage number", which may not exceed the annual numerical limitation on the admission of additional SAWs, known in this part as replenishment agricultural workers (RAWs).

(c) This part sets forth the procedure that will be used by the Secretaries in making a determination of the shortage number, and of the annual numerical limitation. This part also establishes the

procedure which a group or association of employers of individuals who work in SAS must use in order to request the Secretaries to increase the shortage number. Further, this part sets forth the procedure through which a group of RAWs may request the Secretaries to decrease the number of work-days of employment required for a given FY in order to maintain their temporary resident alien status.

§ ___.1 Purpose and scope.

(a) This part has a narrow focus. It is based in part on regulations already promulgated by the United States Department of Labor (DOL), the United States Department of Agriculture (USDA), and the Immigration and Naturalization Service (INS), all of which have responsibilities under the INA. Where appropriate in this part, reference will be made to existing regulations and their location.

(b) Section 210A(a)(1) of the INA requires action by the Secretaries to determine the shortage number. That number will become the basis upon which the Attorney General will provide for the admission for lawful temporary resident status, or for the adjustment of status to lawful temporary resident status, of a number of aliens. The number (if any) of such aliens to be admitted will be the lesser of the shortage number or the annual numerical limitation on admission of additional SAWs, which is set by formula in section 210A(b) of the INA. These additional SAWs are known as RAWs and may be admitted beginning with FY 1990.

(c) This part establishes the procedure by which the Secretaries will use available information to make the determination required by the INA. This part is not concerned with the procedure, nor qualifications, through which individuals may become eligible for RAW status.

§ ___.2 Definitions.

For purposes of this part:

(a) "Act" and "INA" mean the Immigration and Nationality Act (8 U.S.C. 1101, *et seq.*), as amended by the Immigration Reform and Control Act of 1986 (IRCA), with reference particularly to sections 210 and 210A (8 U.S.C. 1160 and 1161).

(b) "Alien 'A' Number" refers to an INS Alien Registration Number assigned to each alien.

(c) "Annual numerical limitation" refers to the upper limit on the number of aliens who may be admitted as RAWs in any FY and is set by statutory formula in section 210A(b) of INA. If the shortage number determined under this part exceeds the annual numerical limitation, the number of aliens who may be admitted, or have their status adjusted, cannot exceed the annual numerical limitation.

(d) "Director" means the Director of the Bureau of the Census, United States Department of Commerce.

(e) "DOL" means the United States Department of Labor.

(f) "Immigration and Naturalization Service (INS)" is the agency within the United States Department of Justice which is responsible for administering the INA.

(g) "Replenishment Agricultural Worker (RAW)" is an alien identified with an INS Alien Registration Number in the A94000000 series (A94 followed by any six digits) who is admitted during FY 1990 through FY 1993 for lawful temporary resident alien status or whose status is adjusted to that of an alien lawfully admitted for temporary residence, in accordance with section 210A of the INA, to meet a shortage of workers employed in SAS.

(h) "Reportable Worker" is an alien employed in SAS who is admitted with lawful temporary resident alien status or whose status is adjusted to that of an alien lawfully admitted for temporary residence, and who is identified by an INS Alien Registration Number in the A90000000 series (A9 followed by any seven digits). This series includes (1) resident aliens admitted under section 245A of the INA, (2) resident alien-SAWs admitted under section 210 of the INA, and (3) anticipated resident alien-RAWs admitted between FY 1990 and FY 1993 under section 210A of the INA.

Note.—This series also includes aliens employed in SAS who have applied for admission or adjustment of status under section 210.

(i) "Seasonal Agricultural Services (SAS)" as provided by section 210(h) of the Act means the "performance of field work related to planting, cultural practices, cultivating, growing and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture." 8 U.S.C. 1160(h). The definitions of SAS promulgated by the Secretary of Agriculture are located at 7 CFR part 1d, and are restated for informational purposes at 29 CFR 502.2(o)(2).

(j) "Secretaries" for purposes of this part means the Secretary of the United States Department of Agriculture and the Secretary of the United States Department of Labor.

(k) "Shortage Number" means the number, determined jointly by the Secretaries, of additional aliens who should be admitted to the United States or who should otherwise acquire the status of aliens lawfully admitted for temporary residence under section 210A of the INA to meet a shortage of workers to perform SAS in the United States during a specific FY.

(l) "Special Agricultural Worker (SAW)" is (1) an alien granted temporary resident alien status as a result of an application filed pursuant to section 210 of the INA, establishing residence in the United States and employment in SAS for at least 90 man-days (days in which at least one hour is worked) during the 12-month period ending May 1, 1986; and (2) a RAW granted temporary resident alien status pursuant to section 210A of the INA.

(m) "Starting number" is the number of individuals whose status has been finally adjudicated to that of SAWs under section 210 of the INA, as reported to the Secretaries by the Director by September 1 of each FY. It is the base number from which the annual numerical limitation is determined.

(n) "USDA" means the United States Department of Agriculture.

(o) "Work-day" means a calendar day during which at least 4 hours of work in Sas is performed.

Note.—Work-day is a term specific to the SAW/RAW program and carries with it employer reporting requirements under 29 CFR part 502. The term is to be distinguished from "man-day" (one hour per day) which is used in other labor standards statutes, and is used under the INA and INS regulations to determine whether an alien has sufficient experience in agricultural employment to be eligible for SAW/RAW status.

§ ___.3 Overall determination of the shortage number.

The shortage number is:

(a) the anticipated need in work-days for labor to perform SAS (as determined in § ___.5 of this part) for the FY, minus

(b) the supply in work-days of labor to perform SAS (as determined in § ___.6 of this part) for that FY,

(c) divided by the factor (determined under § ___.13 of this part) for work-days per worker.

The formula set forth in this section is (paragraph (a) − paragraph (b)) ÷ paragraph (c).

§ ___.4 No replenishment if no shortage.

The Secretaries may not determine that there is a shortage unless, based on the criteria set forth in §§ ___.5 and ___.6 of this part, the Secretaries determine that there will not be sufficient able, willing, and qualified workers available to perform SAS required in the FY involved. If there is no determination of shortage, no RAWs

may be admitted for the FY involved, except as provided under section 210A(a)(7) of the Act, and § ____.20 of this part.

§ ____.5 Determination of need.

(a) The anticipated need for labor to perform SAS for a FY is determined as follows:

(1) *Base*—The Secretaries shall estimate jointly, using statistically valid methods, the number of work-days of labor performed in SAS in the United States in the previous FY. This is an estimate of the total work-days of labor performed by hired labor in SAS—not just those work-days performed by SAWs.

(2) *Adjustment for crop losses and changes in industry*—The Secretaries shall jointly—

(i) Increase the base number by the number of work-days of labor in SAS in the United States that the Secretaries estimate would have been needed in the previous FY to avoid any crop damage or other loss that resulted from the unavailability of labor, and

(ii) Increase or decrease the base number by the projected change in the number of work-days of labor in SAS as a result of

(A) The forecast of growth or contraction in the production of crops included in SAS, and

(B) The forecast of changes in the number of work-days of labor due to on-farm changes in technologies and personnel practices that affect the need for, and retention of, workers to perform such services.

(b) The Secretary of Agriculture shall collect the data necessary for making the estimate described in paragraph (a) of this section.

§ ____.6 Determination of supply.

(a) The anticipated supply of labor to perform SAS for a FY is determined as follows:

(1) *Base*—The Secretaries shall use the number estimated under § ____.5(a)(1) of this part as the base number for estimating the anticipated supply of such labor.

(2) *Adjustments for retirements and increased recruitment*—The Secretaries shall jointly—

(i) Decrease the base number by the number of work-days of labor in SAS in the United States that the Secretaries estimate will be lost due to retirement and movement of workers out of performance of SAS, and

(ii) Increase the base number by the number of additional work-days of labvor in SAS in the United States that the Secretaries estimate can reasonably be expected to result from the availability of able, willing, qualified, and unemployed SAWs, rural low skill or manual laborers, and domestic agricultural workers.

(3) *Bases for increased number*—In making the adjustment under paragraph (a)(2) of this section, the Secretaries shall consider—

(i) The effect, if any, that improvements in wages and working conditions offered by employers are projected to have on the availability of workers to perform SAS, taking into account the adverse effect, if any, such improvements in wages and working conditions are projected to have on the economic competitiveness of the perishable agricultural industry,

(ii) The effect, if any, of enhanced recruitment efforts by employers of such workers and government employment services in the traditional and expected areas of supply of such workers, and

(iii) The number of able, willing, and qualified individuals who apply for employment opportunities in SAS listed with offices of government employment services.

(b) The Secretary of Labor shall collect the data necessary for making the adjustments described in paragraphs (a)(2) and (a)(3) of this section, except that the Secretary of Agriculture shall determine any adverse effect on the economic competitiveness of the perishable agricultural industry described above in paragraph (a)(3)(i) of this section.

§ ____.7 Estimate of the number of SAWs in SAS and determination of work-day per worker factor.

(a) Employers who utilize reportable workers (identified by an INS alien registration number beginning A9 followed by any seven digits) to perform SAS during FY 1989 through FY 1992 are required by section 210A(b)(2) of the INA and regulations located at 29 CTR part 502 to report to the Federal government on the utilization of such workers. An official form, ESA–92 (OMB approval number 1215–0168) must be submitted quarterly, by any employers who employed such workers in SAS during the quarter. The Secretaries have designated the Committee for Employment Information on Special Agricultural Workers, 1201 East 10th Street, Jeffersonville, Indiana 47132, as the entity to receive the reports. No additional reporting of such information is required by this regulation.

(b) The Director shall, before the end of each FY (beginning with FY 1989 and ending with FY 1992), estimate the number of SAWs who have performed SAS in the United States for at least 15 work-days during the FY. The Act further requires that the Director determine the average number of work-days worked in SAS by certain SAWs during the FY under consideration.

(c) The Committee for Employment Information on Special Agricultural Workers shall furnish to the Director, in the form and manner specified by the Director, information contained in the reports (ESA–92's) submitted by employers. The Director shall base estimates of the number of SAWs working in SAS and the average number of work-days worked by SAWs on the information received from the Committee.

(d) In making the estimates, the Director shall take into account (to the extent feasible) the underreporting or duplicate reporting on the number of SAWs that may be occurring. The Director shall periodically conduct appropriate surveys of agricultural employers and others to ascertain the extent of such underreporting or duplicate reporting.

(e) Subject to the provisions of section § ____.13 of this part for each FY, the estimate of the average number of work-days so derived by the Director is the basis for determination of the work-day per worker factor. That factor is the denominator in the formula specified in section § ____.3 of this part for making the overall determination of the shortage number.

§ § ____.8 Announcement of the annual numerical limitation on the admission of replenishment agricultural workers.

(a) The Secretaries will make the calculation of the "annual numerical limitation" according to the statutory formula established by section 210A(b) of the INA. In doing so, the Secretaries will use information from INS regarding the number of individuals whose status was finally adjudicated (approved) as SAWs under section 210 of the INA. In the event that INS is not able to make final determinations on all SAW applications prior to the beginning of FY 1990, the Secretaries will use the number of final adjudications reported by INS to the Director as the "starting number" for the calculation applicable to FY 1990. The Director will advise the Secretaries by September 1, 1989, of the number to be used in the calculation, based upon the latest available INS data. However, in the event INS is unable to complete its adjudication of all SAW applications by the end of FY 1989, the Secretaries, prior to the end of each of the following fiscal quarters, will recalculate the annual numerical limitation by including in the "starting number" all those aliens who the Director reports have been

finally adjudicated as SAWs subsequent to any earlier determination of the annual numerical limitation, and by adjusting the number of SAWs who worked in SAS to take into account the increase in the number of reportable workers who obtained SAW status.

(b) Section 210A(b)(3)(i) of the INA requires that before the end of each FY, beginning with FY 1989 and ending with FY 1992, the Director estimate the number of SAWs (those individuals whose status was finally adjusted under section 210 of the INA or who were admitted or whose status was adjusted under section 210A of the INA) who performed SAS at any time (for at least 15 work-days) during the FY. The estimate of the Director will be determined pursuant to § § ____.7 of this part and will be used by the Secretaries as specified in the formula for calculating the annual numerical limitation.

(c) Section 210A(b)(1)(C) of the INA requires that the estimate of the Director be increased or decreased to reflect any increase or decrease in the number of nonimmigrant aliens admitted to perform temporary SAS (H–2A workers) in the FY, compared to the prior FY. The Secretaries will use the difference between the number of H–2A workers admitted to perform SAS during FY 1989 compared to FY 1988 as the basis for adjusting the estimate of the Director of SAWs who worked in SAS in FY 1989, and in each of the following FY's will use the change between the current and the prior year as the basis for adjusting the estimate of the Director. Specifically, if there is an increase in the number of H–2A workers who performed SAS in FY 1989 compared to FY 1988, the amount of the increase will be added to the estimate of the Director of the number of SAWs who performed SAS in FY 1989. If there is a decrease in the number of H–2A workers who performed SAS, the amount of the decrease will be subtracted from the estimate of the Director.

(d) For FY 1990, the annual numerical limitation is: (1) 95 percent of the number of individuals finally adjudicated as SAWs (described in paragraph (a) of this section as the "starting number"), minus (2) the number of SAWs who performed SAS during FY 1989 as estimated by the Director (as described above in paragraph (b) of this section), and as adjusted to reflect any change in the number of H–2A workers admitted to perform SAS as described above in paragraph (c) of this section.

(e) For FY 1991, the annual numerical limitation is: (1) 90 percent of the number determined in accordance with step 1 in paragraph (d) of this section (that is, 90 percent of 95 percent of the starting number, except, in the event that INS continues to adjust individuals to SAW status after the beginning of FY 1990, the additional SAWs will be added to the starting number used for FY 1990 and the entire calculation will be redone prior to the end of each fiscal quarter based upon the larger "starting number"), minus (2) the number of SAWs, including RAWs, who performed SAS during FY 1990 as estimated by the Director adjusted to reflect any change in the number of H–2A workers admitted to perform SAS.

(f) For FY 1992 and 1993, the annual numerical limitation is: (1) 90 percent of the number determined in accordance with step 1 for the prior FY (that is, for FY 1992, 90 percent of 90 percent of 95 percent of the starting number, except, in the event that INS continues to adjust individuals to SAW status after the beginning of FY 1991, the additional SAWs will again be added to the original "starting number" and the entire calculation be redone prior to the end of each fiscal quarter. Similarly, for FY 1993, if INS continues to adjust individuals to SAW status after the beginning of FY 1992, the additional SAWs will be added to the "starting number" and the entire calculation redone prior to the end of each fiscal quarter by taking 90 percent of 90 percent of 90 percent of 95 percent of the starting number), minus (2) the number of SAWs, including RAWs, who performed SAS during the prior FY, adjusted to reflect any change in the number of H–2A workers admitted to perform SAS.

(g) The Secretaries will also recalculate the annual numerical limitation pursuant to the procedure set forth in paragraph (e) or (f) of this section, as appropriate, to incorporate the latest available information from INS and the Director, if the Secretaries grant an increase in the shortage number under § ____.20 of this part and the annual numerical limitation is lower than the resulting shortage number.

(h) Once INS and the Director advise the Secretaries that all applications for SAW status have been finally adjudicated, the annual numerical limitation will be determined once for each subsequent FY, prior to the end of the preceding FY, and the number will be fixed for the entire FY.

(i) The Secretaries will announce the annual numerical limitation in the **Federal Register** at the time the shortage number is announced. Subsequent additions to the starting number and numerical limitation will be announced in the **Federal Register**.

(j) There shall be no administrative appeal of the Secretaries' determination of the annual numerical limitation, which shall be the final agency action.

Subpart B—Procedure for Determination of the Shortage Number

§ ____.10 General.

(a) Although under the INA it is the responsibility of the Secretaries to determine the shortage number, that duty requires the cooperation and input of DOL, USDA, INS, and the Director. INS has the data and the authority needed to identify SAWs and RAWs from among all reportable workers for whom data is submitted on the ESA–92 forms, based upon their alien registration numbers. The Director is responsible for determination of the work-day per worker factor, which is the denominator in the overall formula to be used by the Secretaries.

§ ____.11 Data for determination of need to be collected by the Secretary of Agriculture.

(a) The Secretary of Agriculture will provide the data required by § ____.5(a) of this part, for estimating the anticipated need for SAWs, through on-going surveys and estimating procedures, including the quarterly agricultural labor surveys (OMB approval number 0535–0109), conducted by the National Agricultural Statistics Service (NASS), and the USDA baseline method of forecasting crop production.

§ ____.12 Data for determination of supply to be collected by the Secretary of Labor.

(a) The Secretary of Labor will collect the data to estimate the anticipated supply of labor required by § ____.6(a) of this part, except that relating to the economic competitiveness of the perishable agricultural industry, which is monitored by USDA. DOL will collect these data through a four-year series of farmworker surveys (OMB approval number 1225–0044) and surveys among the rural unemployed (OMB approval number 1225–0048) to develop information for estimating changes in the labor supply. DOL will also use additional information from the ESA–92 forms which employers of reportable workers in SAS must submit to the Committee for Employment Information on Special Agricultural Workers. The surveys will be limited to employment and potential employment within SAS, as defined by the Secretary of Agriculture in regulations located at 7 CFR part 1d.

§ ____.13 Director, Bureau of the Census, to determine the work-day per worker factor.

(a) For FY 1990, the work-day per worker factor is the average number, as estimated by the Director pursuant to § ____.7 of this part, of work-days of SAS performed by SAWs in the United States at any time in FY 1989.

(1) However, if the Director determines that the information reported by employers using the ESA-92 form is not adequate to make a reasonable estimate of the average number, and the inadequacy is not due to the refusal or failure of employers to report the required information, the factor for FY 1990 is 90.

(2) If the Director determines that the information is inadequate because employers refused or failed to report the required information, the Director, in consultation with the Secretaries, shall use any information available and set the value of the work-day per worker factor.

(b) For FY 1991, the factor is the average number, as estimated by the Director pursuant to § ____.7 of this part, of work-days of SAS performed in the United States by RAWs during FY 1990. RAWs are a specific subset of SAWs, who may enter the United States beginning with FY 1990 as RAWs. See § ____.2 of this part. If no RAWs are admitted or have their status adjusted during FY 1990, or if so few RAWs are admitted or have their status adjusted as to provide insufficient observations for reliability, or if RAWs are admitted or have their status adjusted so late in a FY as to render their work experience inappropriate as a measure for estimating future work force needs, the Director will use the procedures in paragraph (a)(1) or (a)(2) of this section to determine the factor for FY 1991.

(c) For FY 1992, the factor is the average number, as estimated by the Director pursuant to § ____.7 of this part, of work-days of SAS performed in the United States in each of the two previous FY's (1990 and 1991) by RAWs who obtained lawful temporary resident alien status during either of those years. If no RAWs are admitted or have their status adjusted during FY 1990 and FY 1991, or if so few RAWs are admitted or have their status adjusted as to provide insufficient observations for reliability, or if RAWs are admitted or have their status adjusted so late in a FY as to render their work experience inappropriate as a measure for estimating future work force needs, the Director will use the procedures in paragraph (a)(1) or (a)(2) of this section to determine the factor for FY 1992.

(d) For FY 1993, the factor is the average number, as estimated by the Director pursuant to § ____.7 of this part, of work-days of SAS performed in the United States in each of the two previous FY's (1991 and 1992) by RAWs who obtained lawful temporary resident alien status during either of those years. If no RAWs are admitted or have their status adjusted during FY 1991 and 1992, or if so few RAWs are admitted or have their status adjusted as to provide insufficient observations for reliability, or if RAWs are admitted or have their status adjusted so late in a FY as to render their work experience inappropriate as a measure for estimating future work force needs, the average number of work-days worked by RAWs who obtained lawful temporary resident alien status during FY 1990 will be the factor. If no RAWs are admitted during FY 1990, FY 1991, and FY 1992, the Director will use the procedures in paragraph (a)(1) or (a)(2) of this section to determine the factor for FY 1993.

§ ____.14 Secretaries of Agriculture and Labor, joint determination of the shortage number.

(a) Section 210(A) of the INA requires that before the beginning of each FY, starting with FY 1990 and ending with FY 1993, the Secretaries shall determine jointly the shortage number. The shortage number is the number (if any) of additional aliens (RAWs) who should be admitted to the United States or should otherwise acquire the status of aliens lawfully admitted for temporary residence under section 210A of the INA to meet a shortage of workers to perform SAS in a given FY. The Secretaries will announce their determination by the publication of a notice in the Federal Register.

(b) No later than September 1, prior to the FY under consideration, the Director shall provide the Secretaries with the estimate of the Director of the number of SAWs who performed SAS during the FY, and the determination of the Director of the work-day per worker factor.

(c) No later than September 1, prior to the FY under consideration, staff from the USDA and DOL offices identified in § ____.20(d) of this part shall exchange estimates prepared in accordance with §§ ____.5 and ____.6 of this part, to facilitate review and determination of the shortage number.

(d) In order to meet the statutory deadline for issuing the shortage number determination and the annual numerical limitation, the Departments will, where appropriate, collect and use data through the third fiscal quarter of each FY, then add to it data received from the fourth quarter of the prior FY. However, certain data will not be available for the fourth quarter of FY 1988, because the reporting systems were not in effect. As a result, data from the first three quarters of FY 1989 may, if appropriate, be used in the initial determination for FY 1990. Also, information concerning the number of aliens adjusted to SAW status will be the most up-to-date numbers provided by INS and the Director prior to the issuance of the annual numerical limitation.

(e) There shall be no administrative appeal of the determination of the Secretaries of the shortage number, except as set forth in §§ ____.20 and ____.30 of this part.

Subpart C—Emergency Procedure for Increase in Shortage Number

§ ____.20 Request by group or association representing employers.

(a) After the beginning of a FY in which RAWs may be admitted (1990 through 1993), a group or association of employers, or potential employers, of individuals who perform SAS may request the Secretaries to increase the shortage number for the FY. This may mean that the Secretaries set a shortage number in the event that they initially determined that the shortage number was zero for the FY under consideration. It is anticipated that this provision would apply in cases of an unanticipated bumper crop, a significant change in weather conditions or cropping patterns, or other significant changes that could not have been reasonably predicted or accounted for in the original determination of the shortage number for a FY.

(b) The request must show that extraordinary, unusual, and unforeseen circumstances have resulted in a significant shortage of workers to perform SAS due to—

(1) A significant increase in the need for SAWs in the FY, or

(2) A significant decrease in the availability of able, willing, and qualified workers to perform SAS, or

(3) A significant decrease, below the work-day per worker factor applicable to the FY, in the number of work-days as SAS performed by recently admitted or adjusted RAWs (meaning those RAWs admitted or adjusted during the last 5 fiscal quarters or such longer period as the Director determines is necessary to include sufficient numbers of RAWs for a statistically reliable estimate, for whom there exist at least 2 full fiscal quarters of reported work-days).

(c) To meet their initial burden, the requesters must demonstrate that as a result of extraordinary, unusual, and unforeseen circumstances, there is a significant shortage in the region of the requesters, of the labor needed to avoid crop damage or other loss, and that there is an insufficient supply of able, willing, and qualified workers in the region(s) of traditional and expected labor supply for the location and crop(s) of the requesters who are available to work in the region of the requesters. They must show that the labor needed to avoid crop damage or other loss is significantly greater than the availability in those regions of able, willing, qualified, and unemployed SAWs, rural low skill or manual laborers, and domestic agricultural workers. Requesters also must show any recruitment efforts they have undertaken, including information as to whether they recruited in the region or regions of traditional and expected labor supply for the location and crop(s) of the requesters, offering wages, working conditions, and other terms of employment, including, but not limited to, housing, transportation, meals, and subsistence, comparable to or better than those provided generally in the same or comparable occupations and crops in the labor market area, and that the normal qualifications for such occupations and crops were applied. Requesters may also show the recruitment efforts undertaken by others.

(d) The request must be in writing and must be submitted to either the Secretary of Labor, Attention: Assistant Secretary for Policy, 200 Constitution Ave., NW., Washington, DC 20210, or the Secretary of Agriculture, Attention: Assistant Secretary for Economics, Fourteenth St. and Independence Ave., SW., Washington, DC 20250–0100. For purposes of the time periods specified below, the date the request is received by either Secretary will mark the beginning of the time periods.

(e) Not later than 3 business days (days when the Federal offices involved are open for normal business) after the request is received, the Secretaries shall provide for notice in the **Federal Register** of the substance of the request and shall provide the opportunity for interested parties to submit information to the Secretaries on a timely basis (received by the Secretaries within 10 calendar days of publication of the notice). The Secretaries shall also provide notice of any designation of an agent to receive information regarding availability of workers pursuant to paragraph (d) of this section, and shall set a date by which information regarding enhanced recruitment efforts must be received.

(f) Not later than 21 calendar days after receipt of the request, and after consideration of any information submitted on a timely basis with respect to the request, the Secretaries shall make their determination on the request and provide for notice in the **Federal Register**. The request shall be granted and the shortage number for the FY increased if and to the extent that the Secretaries determine that such an increase is justified based upon the showing and circumstances described above in paragraph (b) of this section, taking into account reasonable recruitment efforts having been undertaken in the traditional and expected areas of supply of such workers for the location and crops of the requesters.

(g)(1) Requesters at their option may designate an agent to be notified of the availability of workers within and outside of traditional and expected areas of labor supply. Persons with knowledge of able, willing, and qualified workers available to work in the region of the requesters should provide specific written information regarding such workers to the Secretaries as soon as possible. If such information is received, the Secretaries will advise the designated agent on a daily basis of the reports received so that further recruitment may be conducted. In addition, the Secretaries will consider requests by representatives of other groups of interested persons for notification on the same basis as the designated agent of the requesters, and will provide such notice if the requests are limited to a reasonable number.

(2) Requesters have no obligation to pursue the enhanced recruitment efforts set forth above in (g)(1) of this section. However, if such efforts are undertaken, they will be considered to be significant in determining the availability of workers. Thus, to the degree that available workers are located, the number of additional SAS workers needed will be reduced or eliminated. However, if workers fail to respond to such enhanced recruitment efforts, the Secretaries may consider such efforts to be significant evidence that workers are not in fact available in that area. If this enhanced recruitment is not undertaken, the Secretaries will make their determination based upon the available information.

(h) Groups or associations representing employers or potential employers who have reason to believe that they may request an emergency increase in the shortage number may provide the Secretaries with early notification of the potential labor shortages and may designate an agent to receive information regarding the location of available workers. If such advance notice is received, the Secretaries will publish a notice thereof in the **Federal Register** so that the procedures set forth in paragraph (d) of this section may be undertaken in advance of any request for an emergency increase.

(i) In making the determination under the emergency procedures, the Secretaries have determined that job vacancies that result from strikes, or other labor disputes involving a work stoppage, or a lockout, will not be regarded as labor shortages. The Secretaries will subtract from any determination to increase the shortage number, the specific verified number of jobs that are vacant because of a strike, or other labor dispute involving a work stoppage, or lockout.

(j) In making their determination, the Secretaries may use any available information, including available data from the State Employment Service Agencies and the United States Employment Service, to examine the validity of the information submitted by interested parties.

(k) There shall be no administrative appeal of the decision of the Secretaries regarding a particular request for an increase in the shortage number, which shall be the final agency action.

Subpart D—Procedure for Decreasing the Work-day Requirement

§ ___.30 Request by group of special agricultural workers.

(a) After the beginning of a FY in which RAWs may be admitted (FY 1990 through FY 1993) and no later than 90 days after the end of the FY, a group of such workers may request that the Secretaries decrease the number of work-days required under section 210A(d)(5) (A) and (B) of the INA. Subparagraph (A) of section 210A(d)(5) requires that RAWs perform SAS for at least 90 work-days in each of the first three years after the alien obtained the status of an alien lawfully admitted for temporary residence, in order to avoid deportation. Subparagraph (B) of section 210A(d)(5) provides that such an alien may not be naturalized unless that alien has worked at least 90 work-days in SAS in each of five years after obtaining the status of an alien lawfully admitted for temporary residence.

(b) The requester must show that extraordinary, unusual, and unforeseen

circumstances have resulted in a significant decrease in the shortage number with respect to that FY due to—

(1) A significant decrease in the need for SAWs in the FY, or

(2) A significant increase in the availability of able, willing, and qualified workers to perform SAS, or

(3) A significant increase, above the work-day per worker factor applicable to the FY, in the number of man-days of SAS performed by recently admitted or adjusted RAWs (those RAWs admitted or adjusted during the last 5 fiscal quarters or such longer period, as determined by the Director, necessary to include sufficient numbers of RAWs for a statistically reliable estimate, for whom there exist at least two full fiscal quarters of reported work-days).

(c) The request must be in writing and must be submitted to either the Secretary of Labor or the Secretary of Agriculture as specified in § ___.20(c) of this part.

(d) Not later than 3 business days after the request is received, the Secretaries shall provide for notice in the **Federal Register** of the substance of the request and shall provide the opportunity for interested parties to submit information to the Secretaries on a timely basis. The time allowed for the receipt of such information will be set by the Secretaries.

(e) Before the end of the FY, or within 30 days if the request is received after September 1, the Secretaries, after consideration of any information submitted on a timely basis with respect to the request and any other available information, shall make their determination on the request and provide for notice in the **Federal Register**. The request shall be granted and the required number of work-days for the FY shall be reduced if, and by the same proportion as, the Secretaries determine that a decrease in the shortage number is justified based upon the showing and circumstances described in paragraph (b) of this section.

(f) There shall be no administrative appeal of the decision of the Secretaries regarding a request for a decrease in the number of work-days required under section 210A(d)(5) of the INA, which shall be the final agency action.

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January 2, 1990

Part IV

Department of the Treasury

Office of Thrift Supervision

12 CFR Part 571

Investment Portfolio Policy and Accounting Guidelines; Final Statement of Policy and Delay of Effective Date

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 571

[No. 89-538]

RIN 1550-AA18

Investment Portfolio Policy and Accounting Guidelines

Date: December 26, 1989.

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final statement of policy; delay of effective date.

SUMMARY: The Office of Thrift Supervision (the "Office") is hereby delaying the effective date of its final Statement of Policy on Investment Portfolio Policy and Accounting Guidelines in order to allow additional time for consistent standards to be developed by the Federal banking agencies, including the Office, pursuant to the mandate of Title XII, section 1215, of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. 101-73, 103 Stat. 183 ("FIRREA") and in view of the recent progress by the accounting profession to develop standards in this area.

EFFECTIVE DATE: January 2, 1990. The obligations of savings associations to report their financial condition in accordance with generally accepted accounting principles ("GAAP") remains unaffected. Savings associations must comply with the documentation requirements of an investment policy and strategies and board of director reviews on April 1, 1990.

FOR FURTHER INFORMATION CONTACT: Joe A. Hargett, Professional Accounting Fellow, (202) 331-4583, David H. Martens, Chief Accountant of OTS, (202) 331-4579; Douglas P. Foster, Chief Accountant-Corporate and Securities Division, (202) 906-7503, Gary Jeffers, Staff Attorney, (202) 906-6457, Corporate and Securities Division-Legal, or Julie L. Williams, Deputy Chief Counsel, (202) 906-6459, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Office is delaying the effective date of the final Statement of Policy on Investment Portfolio Policy and Accounting Guidelines, published at 54 FR 23457, (June 1, 1989), codified at 12 CFR 571.19, from January 1, 1990 to April 1, 1990. The obligation of savings associations to report their financial condition in accordance with generally accepted accounting principles ("GAAP") requirements remains unaffected by this deferral. This action represents a brief extension of the Office's deferral from August 31, 1989 to January 1, 1990, which was intended to permit the Federal Financial Institutions Examination Council ("FFIEC") to convene a task force to develop a joint policy statement to clarify GAAP for this area (54 FR 35452, August 28, 1989).

The FFIEC task force is presently working on a policy statement to address the safety and soundness requirements, including documentation requirements, of securities activities. Also, the AICPA Accounting Standards Executive Committee ("AcSEC") is presently drafting a Statement of Policy to address the accounting aspects of investment activities. Delay of the effectiveness of the Statement of Policy will enable the FFIEC and the AcSEC to continue and complete crucial steps in the development of their documents. The Office strongly encourages prompt and responsible action by these groups to offer necessary guidance to the financial institutions industry and to achieve clear and consistent standards for all financial institutions.

The Office will issue a Thrift Bulletin entitled "Guidelines for Securities Policy and Strategies" to offer guidance concerning board of directors' responsibilities and the factors the Office will evaluate in assessing an association's intent to trade, hold for sale or hold for investment during this interim period while the AcSEC and the FFIEC prepare their documents. Copies of the Thrift Bulletin may be obtained from Information Services Section, Office of the Secretariat, OTS, 801 17th Street, NW., Washington, DC 20006, (202) 416-2777.

Savings associations' obligation to report their financial condition in accordance with GAAP remains unaffected by the delay in implementation of this Statement of Policy, and the Office will continue to aggressively pursue its efforts to ensure fair and consistent application of generally accepted accounting principles.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b)(B), and 553(d)(3), the Office finds good cause for dispensing with the notice and comment and delayed effective date provisions of the Administrative Procedures Act because this notice makes no substantive change to the regulation and merely delays its effective date and complying with such requirements would be contrary to the public interest.

Executive Order 12291

The Office has determined that this final rule does not constitute a "major rule" and therefore, does not require the preparation of a final regulatory impact analysis.

Regulatory Flexibility Act

The rule is not subject to the provisions of the Regulatory Flexibility Act because no notice of proposed rulemaking is required.

List of Subjects in 12 CFR Part 571

Accounting, Conflicts of interest, Gold, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office hereby amends chapter V of title 12, *Code of Federal Regulations*, as set forth below.

1. The authority citation for part 571 continues to read as follows:

Authority: Sec. 552, 80 Stat. 383, as amended (5 U.S.C. 552); sec. 559, 80 Stat. 388, as amended (5 U.S.C. 559); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464).

§ 571.19 [Amended]

2. Amend paragraph (e) of § 571.19 by removing "January 1, 1990" and inserting in lieu thereof "April 1, 1990".

Director, Office of Thrift Supervision.

Karl T. Hoyle,

Acting Director.

[FR Doc. 90-30392 Filed 12-29-90; 8:45 am]

BILLING CODE 6720-01-M

federal register

Tuesday
January 2, 1990

Part V

Committee for the Implementation of Textile Agreements

Amend the Coverage of Certain Part-Categories for Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Various Countries; Notice

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amending the Coverage of Certain Part-Categories for Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Various Countries

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending coverage of certain part-categories.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, Commodity Industry Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–3400.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

To facilitate the implementation of bilateral textile agreements and export visa arrangements based upon the Harmonized Tariff Schedule (HTS), for goods exported on and after January 1, 1990 and imported on and after January 1, 1990, the coverage is being amended on all visa and certification arrangements and all import controls for countries with part-categories 338–S and 659–H.

The attached directive contains HTS numbers which were published in the supplement to the Harmonized Tariff Schedule.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50979, published on December 11, 1989).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Commissioner: This directive amends, but does not cancel, all import control and counting directives issued to you by the chairman of CITA, which include part categories 338–S and 659–H, produced or manufactured in various countries and exported to the United States on and after January 1, 1990.

This directive amends, but does not cancel, the directive of December 22, 1988 which amended visa requirements for all countries for which visa arrangements are in place with the United States Government.

Effective on January 1, 1990, you are directed to make the changes shown below for all countries with part-Categories 338–S and 659–H. These changes are effective for goods exported on and after January 1, 1990 and imported into the United States on and after January 1, 1990.

Category	*Delete*	*Add*
338–S	6109.10.0009	
659–H	6505.90.6060	6505.90.6080

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–30396 Filed 12–29–89; 9:12 am]

BILLING CODE 3510–DR–M

Reader Aids

Federal Register

Vol. 55, No. 1

Tuesday, January 2, 1990

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Public inspection desk	523-5215
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Document drafting information	523-5237
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Guide to Record Retention Requirements	523-3187
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Privacy Act Compilation	523-3187
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TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JANUARY

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 101st Congress has been completed and will be resumed when bills are enacted into public law during the second session of the 101st Congress, which convenes on January 23, 1990. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641.

Last List December 27, 1989

The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $620.00 domestic, $155.00 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at **(202) 783-3238** from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$10.00	Apr. 1, 1989
3 (1988 Compilation and Parts 100 and 101)	21.00	[1] Jan. 1, 1989
4	15.00	Jan. 1, 1989
5 Parts:		
1–699	15.00	Jan. 1, 1989
700–1199	17.00	Jan. 1, 1989
1200–End, 6 (6 Reserved)	13.00	Jan. 1, 1989
7 Parts:		
0–26	15.00	Jan. 1, 1989
27–45	12.00	Jan. 1, 1989
46–51	17.00	Jan. 1, 1989
52	23.00	[2] Jan. 1, 1988
53–209	18.00	Jan. 1, 1989
210–299	24.00	Jan. 1, 1989
300–399	12.00	Jan. 1, 1989
400–699	19.00	Jan. 1, 1989
700–899	22.00	Jan. 1, 1989
900–999	28.00	Jan. 1, 1989
1000–1059	16.00	Jan. 1, 1989
1060–1119	13.00	Jan. 1, 1989
1120–1199	11.00	Jan. 1, 1989
1200–1499	20.00	Jan. 1, 1989
1500–1899	10.00	Jan. 1, 1989
1900–1939	11.00	Jan. 1, 1989
1940–1949	21.00	Jan. 1, 1989
1950–1999	22.00	Jan. 1, 1989
2000–End	9.00	Jan. 1, 1989
8	13.00	Jan. 1, 1989
9 Parts:		
1–199	20.00	Jan. 1, 1989
200–End	18.00	Jan. 1, 1989
10 Parts:		
0–50	19.00	Jan. 1, 1989
51–199	17.00	Jan. 1, 1989
200–399	13.00	[3] Jan. 1, 1987
400–499	14.00	Jan. 1, 1989
500–End	28.00	Jan. 1, 1989
11	10.00	[2] Jan. 1, 1988
12 Parts:		
1–199	12.00	Jan. 1, 1989
200–219	11.00	Jan. 1, 1989
220–299	19.00	Jan. 1, 1989
300–499	15.00	Jan. 1, 1989
500–599	20.00	Jan. 1, 1989
600–End	14.00	Jan. 1, 1989
13	22.00	Jan. 1, 1989
14 Parts:		
1–59	24.00	Jan. 1, 1989
60–139	21.00	Jan. 1, 1989
140–199	10.00	Jan. 1, 1989
200–1199	21.00	Jan. 1, 1989
1200–End	12.00	Jan. 1, 1989
15 Parts:		
0–299	12.00	Jan. 1, 1989
300–799	22.00	Jan. 1, 1989
800–End	14.00	Jan. 1, 1989
16 Parts:		
0–149	12.00	Jan. 1, 1989
150–999	14.00	Jan. 1, 1989
1000–End	19.00	Jan. 1, 1989
17 Parts:		
1–199	15.00	Apr. 1, 1989
200–239	16.00	Apr. 1, 1989
240–End	22.00	Apr. 1, 1989
18 Parts:		
1–149	16.00	Apr. 1, 1989
150–279	16.00	Apr. 1, 1989
280–399	14.00	Apr. 1, 1989
400–End	9.50	Apr. 1, 1989
19 Parts:		
1–199	28.00	Apr. 1, 1989
200–End	9.50	Apr. 1, 1989
20 Parts:		
1–399	13.00	Apr. 1, 1989
400–499	24.00	Apr. 1, 1989
500–End	28.00	Apr. 1, 1989
21 Parts:		
1–99	13.00	Apr. 1, 1989
100–169	15.00	Apr. 1, 1989
170–199	17.00	Apr. 1, 1989
200–299	6.00	Apr. 1, 1989
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500–599	21.00	Apr. 1, 1989
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22 Parts:		
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24 Parts:		
0–199	19.00	Apr. 1, 1989
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500–699	11.00	Apr. 1, 1989
700–1699	23.00	Apr. 1, 1989
1700–End	13.00	Apr. 1, 1989
25	25.00	Apr. 1, 1989
26 Parts:		
§§ 1.0-1–1.60	15.00	Apr. 1, 1989
§§ 1.61–1.169	25.00	Apr. 1, 1989
§§ 1.170–1.300	18.00	Apr. 1, 1989
§§ 1.301–1.400	15.00	Apr. 1, 1989
§§ 1.401–1.500	28.00	Apr. 1, 1989
§§ 1.501–1.640	16.00	Apr. 1, 1989
§§ 1.641–1.850	19.00	Apr. 1, 1989
§§ *1.851–1.1000	31.00	Apr. 1, 1989
§§ 1.1001–1.1400	17.00	Apr. 1,1989
§§ 1.1401–End	23.00	Apr. 1, 1989
2–29	20.00	Apr. 1, 1989
30–39	14.00	Apr. 1, 1989
40–49	13.00	Apr. 1, 1989
50–299	16.00	Apr. 1, 1989
300–499	16.00	Apr. 1, 1989
500–599	7.00	Apr. 1, 1989
600–End	6.50	Apr. 1, 1989
27 Parts:		
1–199	24.00	Apr. 1, 1989
200–End	14.00	Apr. 1, 1989
28	27.00	July 1, 1989

Title	Price	Revision Date
29 Parts:		
0–99	17.00	July 1, 1989
100–499	7.50	July 1, 1989
500–899	26.00	July 1, 1989
900–1899	12.00	July 1, 1989
1900–1910 (§§ 1901.1 to 1910.441)	24.00	July 1, 1989
*1910 (§§ 1910.1000 to end)	13.00	July 1, 1989
1911–1925	9.00	July 1, 1989
1926	11.00	July 1, 1989
1927–End	25.00	July 1, 1989
30 Parts:		
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200–699	14.00	July 1, 1989
700–End	20.00	July 1, 1989
31 Parts:		
0–199	14.00	July 1, 1989
200–End	18.00	July 1, 1989
32 Parts:		
1–39, Vol. I	15.00	[4] July 1, 1984
1–39, Vol. II	19.00	[4] July 1, 1984
1–39, Vol. III	18.00	[4] July 1, 1984
1–189	23.00	July 1, 1989
190–399	27.00	July 1, 1988
400–629	22.00	July 1, 1989
630–699	13.00	July 1, 1989
700–799	17.00	July 1, 1989
800–End	19.00	July 1, 1989
33 Parts:		
1–199	30.00	July 1, 1989
200–End	20.00	July 1, 1989
34 Parts:		
1–299	22.00	July 1, 1988
300–399	12.00	July 1, 1988
400–End	26.00	July 1, 1988
35	10.00	July 1, 1989
36 Parts:		
1–199	12.00	July 1, 1989
200–End	21.00	July 1, 1989
37	14.00	July 1, 1989
38 Parts:		
0–17	21.00	July 1, 1988
18–End	19.00	July 1, 1988
39	14.00	July 1, 1989
40 Parts:		
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52	27.00	July 1, 1988
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61–80	11.00	July 1, 1989
81–85	11.00	July 1, 1989
81–99	25.00	July 1, 1988
100–149	27.00	July 1, 1989
150–189	24.00	July 1, 1988
190–299	24.00	July 1, 1988
300–399	10.00	July 1, 1989
400–424	23.00	July 1, 1989
425–699	23.00	July 1, 1989
700–789	15.00	July 1, 1989
700–End	31.00	July 1, 1988
41 Chapters:		
1, 1–1 to 1–10	13.00	[5] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	[5] July 1, 1984
3–6	14.00	[5] July 1, 1984
7	6.00	[5] July 1, 1984
8	4.50	[5] July 1, 1984
9	13.00	[5] July 1, 1984
10–17	9.50	[5] July 1, 1984
18, Vol. I, Parts 1–5	13.00	[5] July 1, 1984
18, Vol. II, Parts 6–19	13.00	[5] July 1, 1984
18, Vol. III, Parts 20–52	13.00	[5] July 1, 1984
19–100	13.00	[5] July 1, 1984
1–100	8.00	July 1, 1989
101	25.00	July 1, 1988
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201–End	13.00	July 1, 1989
42 Parts:		
1–60	16.00	Oct. 1, 1989
61–399	6.50	Oct. 1, 1989
400–429	22.00	Oct. 1, 1988
430–End	22.00	Oct. 1, 1988
43 Parts:		
1–999	15.00	Oct. 1, 1988
1000–3999	26.00	Oct. 1, 1988
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200–499	9.00	Oct. 1, 1988
500–1199	24.00	Oct. 1, 1988
1200–End	17.00	Oct. 1, 1988
46 Parts:		
1–40	14.00	Oct. 1, 1988
41–69	14.00	Oct. 1, 1988
70–89	7.50	Oct. 1, 1988
90–139	12.00	Oct. 1, 1989
140–155	12.00	Oct. 1, 1988
156–165	13.00	Oct. 1, 1988
166–199	14.00	Oct. 1, 1988
200–499	20.00	Oct. 1, 1988
500–End	10.00	Oct. 1, 1988
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70–79	18.00	Oct. 1, 1988
80–End	19.00	Oct. 1, 1988
48 Chapters:		
1 (Parts 1–51)	28.00	Oct. 1, 1988
1 (Parts 52–99)	18.00	Oct. 1, 1988
2 (Parts 201–251)	18.00	Oct. 1, 1988
2 (Parts 252–299)	18.00	Oct. 1, 1988
3–6	20.00	Oct. 1, 1988
7–14	25.00	Oct. 1, 1988
15–End	26.00	Oct. 1, 1988
49 Parts:		
1–99	13.00	Oct. 1, 1988
100–177	24.00	Oct. 1, 1988
178–199	20.00	Oct. 1, 1988
200–399	19.00	Oct. 1, 1988
400–999	24.00	Oct. 1, 1988
1000–1199	18.00	Oct. 1, 1988
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50 Parts:		
1–199	17.00	Oct. 1, 1988
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600–End	13.00	Oct. 1, 1988
CFR Index and Findings Aids	29.00	Jan. 1, 1989
Complete 1990 CFR set	620.00	1990
Microfiche CFR Edition:		
Complete set (one-time mailing)	115.00	1985
Subscription (mailed as issued)	185.00	1987
Subscription (mailed as issued)	185.00	1988
Subscription (mailed as issued)	188.00	1989
Individual copies	2.00	1990

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan.1, 1988 to Dec.31, 1988. The CFR volume issued January 1, 1988, should be retained.

[3] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1988. The CFR volume issued January 1, 1987, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

CFR ISSUANCES 1990
Complete Listing of 1989 Editions and Projected January, 1990 Editions

This list sets out the CFR issuances for the 1989 editions and projects the publication plans for the **January, 1990** quarter. A projected schedule that will include the **April, 1990** quarter will appear in the first **Federal Register** issue of April.

For pricing information on available 1989-1990 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. Individual announcements of the actual release of volumes will continue to be printed in the **Federal Register** and will provide the price and ordering information. The weekly CFR checklist or the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR volumes actually printed.

Normally, CFR volumes are revised according to the following schedule:

Titles 1-16—January 1
Titles 17-27—April 1
Titles 28-41—July 1
Titles 42-50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

Titles revised as of January 1, 1989:

Title	
CFR Index	1-199
	200-End
1-2 (Revised as of April 1, 1989)	**10 Parts:**
	0-199
3 (Compilation)	200-399 (Cover only)
	400-499
4	500-End
5 Parts:	**11** (Cover only)
1-1199	
1200-End	**12 Parts:**
	1-199
6 [Reserved]	200-299
	300-499
7 Parts:	500-End
0-45	
46-51	**13**
52	
53-209	**14 Parts:**
210-299	1-59
300-399	60-139
400-699	140-199
700-899	200-1199
900-999	1200-End
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1060-1119	**15 Parts:**
1120-1199	0-299
1200-1499	300-799
1500-1899	800-End
1900-1944	
1945-End	**16 Parts:**
	0-149
8	150-999
	1000-End
9 Parts:	
1-199	**17 Parts:**
200-End	1-199
	200-239
10 Parts:	240-End
0-199	
200-499	**18 Parts:**
500-End	1-149
	150-279
11 (Cover only)	280-399
	400-End
12 Parts:	
1-199	**19 Parts:**
200-299	1-199
300-499	200-End
500-End	
	20 Parts:
13	1-399
	400-499
14 Parts:	500-End
1-59	
60-139	**21 Parts:**
140-199	1-99
200-1199	100-169
1200-End	170-199
	200-299
15 Parts:	300-499
0-299	500-599
300-799	600-799
800-End	800-1299
	1300-End
16 Parts:	
0-149	**22 Parts:**
150-999	1-299
1000-End	300-End
17 Parts:	**23**
1-199	
200-239	**24 Parts:**
240-End	0-199
	200-499
18 Parts:	500-699
1-149	700-1699
150-279	1700-End
280-399	
400-End	**25**
19 Parts:	**26 Parts:**
1-199	1 (§§ 1.0-1-1.60)
200-End	1 (§§ 1.61-1.169)
	1 (§§ 1.170-1.300)
20 Parts:	1 (§§ 1.301-1.400)
1-399	1 (§§ 1.401-1.500)
400-499	1 (§§ 1.501-1.640)
500-End	1 (§§ 1.641-1.850)
	1 (§§ 1.851-1.1000)
21 Parts:	1 (§§ 1.1001-1.1400)
1-99	1 (§ 1.1401-End)
100-169	2-29
170-199	30-39
200-299	40-49
300-499	50-299
500-599	300-499
600-799	500-599
800-1299	600-End
1300-End	
	27 Parts:
22 Parts:	1-199
1-299	200-End
300-End	
23	

Titles revised as of July 1, 1989:

Title	
28	300-399*
	400-End*
29 Parts:	
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500-899	**36 Parts:**
900-1899	1-199
1900-1910 (§§ 1901.1—1910.441)	200-End
1910 (§ 1910.1000 to End)	**37**
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1926	**38 Parts:**
1927-End	**(Revised as of September 1, 1989)**
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700-End	**39**
31 Parts:	**40 Parts:**
0-199	1-51
200-End	52
	53-60
32 Parts:	61-80
1-189	81-99
190-399	100-149
400-629	150-189
630-699	190-299
700-799	300-399
800-End	400-424
	425-699
33 Parts:	700-End
1-199	
200-End	**41 Parts:**
	Chs. 1-100
34 Parts:	Ch. 101
(Revised as of November 1, 1989)	Chs. 102-200
1-299*	Ch. 201-End

Titles revised as of October 1, 1989:

Title

42 Parts:
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400–429*
430–End*

43 Parts:
1–999*
1000–3999*
4000–End*

44*

45 Parts:
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200–499 (Revised as of October 15, 1989)
500–1199
1200–End

46 Parts:
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41–69
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90–139
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47 Parts:
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20–39*
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80–End*

48 Parts:
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Ch. 1 (52–99)*
Ch. 2 (201–251)*
Ch. 2 (252–299)*
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49 Parts:
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50 Parts:
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3 (Compilation)

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5 Parts:
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6 [Reserved]

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27–45
46–51
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53–209
210–299
300–399
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700–899
900–999
1000–1059
1060–1119
1120–1199
1200–1499
1500–1899
1900–1939
1940–1949
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9 Parts:
1–199
200–End

10 Parts:
0–50
51–199
200–399 (Cover only)
400–499
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12 Parts:
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200–219
220–299
300–499
500–599
600–End

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14 Parts:
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60–139
140–199
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1200–End

15 Parts:
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400–End

16 Parts:
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1000–End
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41 Parts:
Chs. 1–100
Ch. 101
Chs. 102–200
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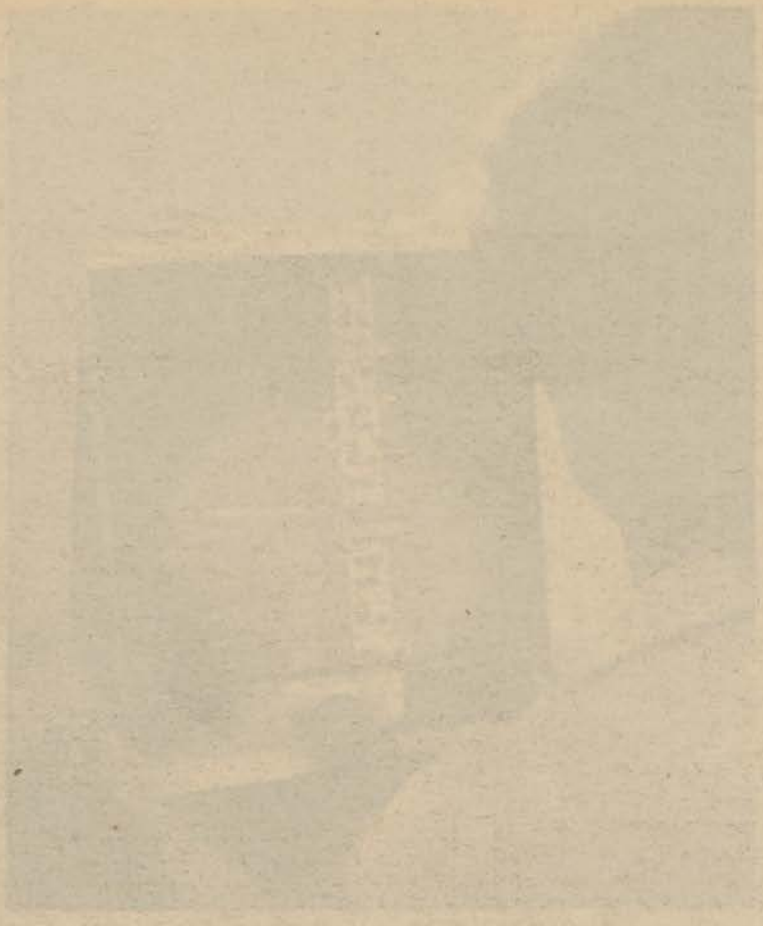
TABLE OF EFFECTIVE DATES AND TIME PERIODS—JANUARY 1990

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
January 2	January 17	February 1	February 16	March 5	April 2
January 3	January 18	February 2	February 20	March 5	April 3
January 4	January 19	February 5	February 20	March 5	April 4
January 5	January 22	February 5	February 20	March 6	April 5
January 8	January 23	February 7	February 22	March 9	April 9
January 9	January 24	February 8	February 23	March 12	April 9
January 10	January 25	February 9	February 26	March 12	April 10
January 11	January 26	February 12	February 26	March 12	April 11
January 12	January 29	February 12	February 26	March 13	April 12
January 16	January 31	February 15	March 2	March 19	April 16
January 17	February 1	February 16	March 5	March 19	April 17
January 18	February 2	February 20	March 5	March 19	April 18
January 19	February 5	February 20	March 5	March 20	April 19
January 22	February 6	February 21	March 8	March 23	April 23
January 23	February 7	February 22	March 9	March 26	April 23
January 24	February 8	February 23	March 12	March 26	April 24
January 25	February 9	February 26	March 12	March 26	April 25
January 26	February 12	February 26	March 12	March 27	April 26
January 29	February 13	February 28	March 15	March 30	April 30
January 30	February 14	March 1	March 16	April 2	April 30
January 31	February 15	March 2	March 19	April 2	May 1



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